

Panaji, 23rd May, 2013 (Jyaistha 2, 1935)

SERIES II No. 8

OFFICIAL GAZETTE

GOVERNMENT OF GOA



PUBLISHED BY AUTHORITY

GOVERNMENT OF GOA

Department of Co-operation

Office of the Registrar of Co-operative Societies

Order

No. 1-3-71/EST/RCS/1535

Read: 1) Order No. 1-3-71/EST/RCS(Part)
Vol. II/4 dated 30-6-2011.2) Order No. 1-3-71/EST/RCS/2514
dated 28-9-2012.

The ad hoc appointment of Shri Avit S. Naik, Asstt. Registrar of Co-op. Societies on the establishment of Registrar of Co-op. Societies, Government of Goa, Panaji made vide order cited above is hereby extended for a period of six months w.e.f. 30-12-2012 to 29-06-2013.

This is issued with the concurrence of the Goa Public Service Commission, Panaji vide letter No. COM/II/11/1(1)/04/313 dated 13-05-2013.

By order and in the name of the Governor of Goa.

J. B. Bhingui, Registrar & ex officio Joint Secretary (Co-op. Societies).

Panaji, 13th May, 2013.

Office of the Asstt. Registrar of Co-operative Societies

Order

No. 2/31/00/TS

Read: This office Order No. 2-31/00/TS dated 24-11-2004 appointing Shri D. R. Kambli, Sr. Auditor/Inspector, Co-op. Societies, North Zone, Mapusa-Goa as a Liquidator of the Shivkrupa Sahakari Grahak Saunstha Maryadit, Ozari, Pedne-Goa.

In partial modification of this office order at Sr. No. 1 cited above Shri Krishna Mhalshekar, Jr. Auditor/Inspector Co-op. Societies, North Zone, Mapusa-Goa is hereby appointed as a Liquidator of the Shivkrupa Sahakari Grahak Saunstha Maryadit, Ozari, Pedne-Goa in place of Shri D. R. Kambli, then Sr. Auditor/Inspector Co-op. Societies, North Zone, Mapusa-Goa with effect from the date of taking over the charge of the society.

Sd/- (R. A. Pednekar), Asstt. Registrar of Co-op. Societies (North Zone).

Mapusa, 19th April, 2013.

Notification

In exercise of the powers vested in me under Section 8(1) of the Goa Co-op. Societies Act, 2001, Bhumi Lalbag Self Help Group Co-op. Society Ltd., Lalbag, Vithalapur, Sankhali, Bicholim-Goa, has been registered under code symbol No. GEN-(c)-405/SHG/NZ/Goa.

Sd/- (R. A. Pednekar), Asstt. Registrar of Co-op. Societies (North Zone).

Mapusa, 12th April, 2013.

Certificate of Registration

Bhumi Lalbag Self Help Group Co-op. Society Ltd., Lalbag, Vithalapur, Sankhali, Bicholim-Goa has been registered on 12-4-2013 and it bears registration code symbol No. GEN-(c)-405/SHG/NZ/Goa. It is classified as "General Society" in terms of Rule 8(1) (12) and sub-classified as "Other Society" under sub-rule 12 (c) of Rule 8(1) of the Goa Co-operative Societies Rules, 2003.

Sd/- (R. A. Pednekar), Asstt. Registrar of Co-op. Societies (North Zone).

Mapusa, 12th April, 2013.

Notification

In exercise of the powers vested in me under Section 8(1) of the Goa Co-op. Societies Act, 2001, Caetan Paul Residency Co-op. Housing Maintenance Society Ltd., Khorlim, Mapusa, Bardez-Goa has been registered under code symbol No. GEN-38/NZ/Goa.

Sd/- (R. A. Pednekar), Asstt. Registrar of Co-op. Societies (North Zone).

Mapusa, 12th April, 2013.

Certificate of Registration

Caetan Paul Residency Co-op. Housing Maintenance Society Ltd., Khorlim, Mapusa, Bardez-Goa has been registered on 12-4-2013 and it bears registration code symbol No. GEN-38/NZ/Goa. It is classified as "Housing Maintenance Society" in terms of Rule 8(1)(7) and sub-classified as "Co-operative Housing Maintenance Society" under sub-rule 7 (d) of Rule 8(1) of the Goa Co-operative Societies Rules, 2003.

Sd/- (R. A. Pednekar), Asstt. Registrar of Co-op. Societies (North Zone).

Mapusa, 12th April, 2013.

Notification

In exercise of the powers vested in me under Section 8(1) of the Goa Co-op. Societies Act, 2001, Sateri Kudne Self Help Group Co-op. Society Ltd., Karwalwada, Kudne, Sanquelim, Bicholim-Goa, has been registered under code symbol No. GEN-(c)-406/SHG/NZ/Goa.

Sd/- (R. A. Pednekar), Asstt. Registrar of Co-op. Societies (North Zone).

Mapusa, 15th April, 2013.

Certificate of Registration

Sateri Kudne Self Help Group Co-op. Society Ltd., Karwalwada, Kudne, Sanquelim, Bicholim-Goa, has been registered on 15-4-2013 and it bears registration code symbol No. GEN-(c)-406/SHG/NZ/Goa. It is classified as "General Society" in terms of Rule 8(1) (12) and sub-classified as "Other Society" under sub-rule 12 (c) of Rule 8(1) of the Goa Co-operative Societies Rules, 2003.

Sd/- (R. A. Pednekar), Asstt. Registrar of Co-op. Societies (North Zone).

Mapusa, 15th April, 2013.

Notification

In exercise of the powers vested in me under Section 8(1) of the Goa Co-op. Societies Act, 2001, The Pedne Multipurpose Co-op. Society Ltd., H. No. 872, Sarmale, Panshiwada, Pedne-Goa has been registered under code symbol No. RES-(c)-12/NZ/Goa.

Sd/- (R. A. Pednekar), Asstt. Registrar of Co-op. Societies (North Zone).

Mapusa, 15th April, 2013.

Certificate of Registration

The Pedne Multipurpose Co-op. Society Ltd., H. No. 872, Sarmale, Panshiwada, Pedne-Goa has been registered on 15-4-2013 and it bears registration code symbol No. RES-(c)-12/NZ/Goa. It is classified as "Resource Society" in terms of Rule 8(1)(10) and sub-classified as "Service Resource Society" under sub-rule 10(c) of Rule 8(1) of the Goa Co-operative Societies Rules, 2003.

Sd/- (R. A. Pednekar), Asstt. Registrar of Co-op. Societies (North Zone).

Mapusa, 15th April, 2013.

Notification

In exercise of the powers vested in me under Section 8(1) of the Goa Co-op. Societies Act, 2001, Shree Fatarpekarin Self Help Group Co-op. Society Ltd., Thikhazen, Maem, Bicholim-Goa has been registered under code symbol No. GEN-(c)-407/SHG/NZ/Goa.

Sd/- (R. A. Pednekar), Asstt. Registrar of Co-op. Societies (North Zone).

Mapusa, 15th April, 2013.

Certificate of Registration

Shree Fatarpekarin Self Help Group Co-op. Society Ltd., Thikhazen, Maem, Bicholim-Goa has been registered on 15-4-2013 and it bears registration code symbol No. GEN-(c)-407/SHG/NZ/Goa. It is classified as "General Society" in terms of Rule 8(1) (12) and sub-classified as "Other Society" under sub-rule 12 (c) of Rule 8(1) of the Goa Co-operative Societies Rules, 2003.

Sd/- (R. A. Pednekar), Asstt. Registrar of Co-op. Societies (North Zone).

Mapusa, 15th April, 2013.

Notification

In exercise of the powers vested in me under Section 8(1) of the Goa Co-op. Societies Act, 2001, SRS Kutira Co-op. Housing Society Ltd., B/H, Mansukh Apartment, Penha-de-France, Bardez-Goa has been registered under code symbol No. HSG-(b)-338/NZ/Goa.

Sd/- (R. A. Pednekar), Asstt. Registrar of Co-op. Societies (North Zone).

Mapusa, 17th April, 2013.

Certificate of Registration

SRS Kutira Co-op. Housing Society Ltd., B/H, Mansukh Apartment, Penha-de-France, Bardez-Goa has been registered on 17-4-2013 and it bears registration code symbol No. HSG-(b)-338/NZ/Goa. It is classified as "Housing Society" in terms of Rule 8(1)(7) and sub-classified as "Co-Partnership Housing Society" under sub-rule 7(b) of Rule 8(1) of the Goa Co-operative Societies Rules, 2003.

Sd/- (R. A. Pednekar), Asstt. Registrar of Co-op. Societies (North Zone).

Mapusa, 17th April, 2013.

Notification

In exercise of the powers vested in me under Section 8(1) of the Goa Co-op. Societies Act, 2001, Shivkrupa Harvalem Self Help Group Co-op. Society Ltd., Harvalem, Sankhali, Bicholim-Goa has been registered under code symbol No. GEN-(c)-408/SHG/NZ/Goa.

Sd/- (R. A. Pednekar), Asstt. Registrar of Co-op. Societies (North Zone).

Mapusa, 18th April, 2013.

Certificate of Registration

Shivkrupa Harvalem Self Help Group Co-op. Society Ltd., Harvalem, Sankhali, Bicholim-Goa has been registered on 18-4-2013 and it bears registration code symbol No. GEN-(c)-408/SHG/NZ/Goa. It is classified as "General Society" in terms of Rule 8(1) (12) and sub-classified as "Other Society" under sub-rule 12 (c) of Rule 8(1) of the Goa Co-operative Societies Rules, 2003.

Sd/- (R. A. Pednekar), Asstt. Registrar of Co-op. Societies (North Zone).

Mapusa, 18th April, 2013.

Notification

In exercise of the powers vested in me under Section 8(1) of the Goa Co-op. Societies Act, 2001, Nav Siddha Surla Self Help Group Co-op. Society Ltd., Deulwada, Surla, Sankhali, Bicholim-Goa has been registered under code symbol No. GEN-(c)-409/SHG/NZ/Goa.

Sd/- (R. A. Pednekar), Asstt. Registrar of Co-op. Societies (North Zone).

Mapusa, 18th April, 2013.

Certificate of Registration

Nav Siddha Surla Self Help Group Co-op. Society Ltd., Deulwada, Surla, Sankhali, Bicholim-Goa has been registered on 18-4-2013 and it bears registration code symbol No. GEN-(c)-409/SHG/NZ/Goa. It is classified as "General Society" in terms of Rule 8(1) (12) and sub-classified as "Other Society" under sub-rule 12 (c) of Rule 8(1) of the Goa Co-operative Societies Rules, 2003.

Sd/- (R. A. Pednekar), Asstt. Registrar of Co-op. Societies (North Zone).

Mapusa, 18th April, 2013.

Notification

In exercise of the powers vested in me under Section 8(1) of the Goa Co-op. Societies Act, 2001, Mahamaya Deulwada Self Help Group Co-op. Society Ltd., Deulwada, Korgao, Pernem-Goa has been registered under code symbol No. GEN-(c)-410/SHG/NZ/Goa.

Sd/- (R. A. Pednekar), Asstt. Registrar of Co-op. Societies (North Zone).

Mapusa, 18th April, 2013.

Certificate of Registration

Mahamaya Deulwada Self Help Group Co-op. Society Ltd., Deulwada, Korgao, Pernem-Goa has been registered on 18-4-2013 and it bears registration code symbol No. GEN-(c)-410/SHG/NZ/Goa. It is classified as "General Society" in terms of Rule 8(1) (12) and sub-classified as "Other Society" under sub-rule 12 (c) of Rule 8(1) of the Goa Co-operative Societies Rules, 2003.

Sd/- (R. A. Pednekar), Asstt. Registrar of Co-op. Societies (North Zone).

Mapusa, 18th April, 2013.

Notification

In exercise of the powers vested in me under Section 8(1) of the Goa Co-op. Societies Act, 2001, Ladfe Pani Vantap Vyavastha Sahakari Saunstha Maryadit, Ladfe, Bicholim-Goa has been registered under code symbol No. GEN-(c)-58/NZ/Goa.

Sd/- (R. A. Pednekar), Asstt. Registrar of Co-op. Societies (North Zone).

Mapusa, 22nd April, 2013.

Certificate of Registration

Ladfe Pani Vantap Vyavastha Sahakari Saunstha Maryadit, Ladfe, Bicholim-Goa has been registered on 22-4-2013 and it bears registration code symbol No. GEN-(c)-58/NZ/Goa. It is classified as "Lift Irrigation Society" in terms of Rule 8(1)(11) and sub-classified as "Flow Irrigation Society" under sub-rule 11 (b) of Rule 8(1) of the Goa Co-operative Societies Rules, 2003.

Sd/- (R. A. Pednekar), Asstt. Registrar of Co-op. Societies (North Zone).

Mapusa, 22nd April, 2013.

Notification

In exercise of the powers vested in me under Section 8(1) of the Goa Co-op. Societies Act, 2001, Brahma Vatareshwar Joshibhat Surla Self Help Group Co-op. Society Ltd., Joshibhat, Surla, Bicholim-Goa has been registered under code symbol No. GEN-(c)-414/SHG/NZ/Goa.

Sd/- (R. A. Pednekar), Asstt. Registrar of Co-op. Societies (North Zone).

Mapusa, 26th April, 2013.

Certificate of Registration

Brahma Vatareshwar Joshibhat Surla Self Help Group Co-op. Society Ltd., Joshibhat, Surla, Bicholim-Goa has been registered on 26-4-2013 and it bears registration code symbol No. GEN-(c)-414/SHG/NZ/Goa. It is classified as "General Society" in terms of Rule 8(1) (12) and sub-classified as "Other Society" under sub-rule 12 (c) of Rule 8(1) of the Goa Co-operative Societies Rules, 2003.

Sd/- (R. A. Pednekar), Asstt. Registrar of Co-op. Societies (North Zone).

Mapusa, 26th April, 2013.

Department of General Administration**Order**

No. 14/8/2001-GAD-III(Part)/1561

On the recommendation of the Local Departmental Promotion Committee, Shri Tulsidas S. Karanzalkar (ST), Senior Assistant, in the Secretariat is hereby promoted with immediate effect on ad hoc basis to the post of Section Officer (Group "B" Gazetted) in the pay scale of ₹ 9,300-34,800 plus Grade Pay of ₹ 4,600/- in the Secretariat for a period of one year or till he is promoted on regular basis whichever is earlier.

2. He shall not confer any right for regular promotion and the service so rendered will not count for the purpose of seniority in that grade and for eligibility for promotion to the next higher grade.

3. The expenditure towards pay and allowances of Shri Tulsidas S. Karanzalkar, shall be debited to the Budget Head: 2052—Secretariat General Services, 00—, 090—Secretariat (Non-Plan), 05—Revenue Department, 01—Salaries.

4. On promotion Shri Tulsidas S. Karanzalkar is transferred and posted in the Labour Department on vacant post vice Shri Anil Nanodkar, Section Officer, retired on superannuation, with immediate effect.

By order and in the name of the Governor of Goa.

Harish N. Adconkar, Under Secretary (GA-I).

Porvorim, 15th May, 2013.

Department of Labour**Notification**

No. 28/1/2013-Lab/208

The following award passed by the Industrial Tribunal and Labour Court, at Panaji-Goa on 24-01-2013 in reference No. IT/15/2002 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

D. S. Morajkar, Under Secretary (Labour).

Porvorim, 25th April, 2013.

IN THE INDUSTRIAL TRIBUNAL AND
LABOUR COURT
GOVERNMENT OF GOA AT PANAJI

(Before Smt. Bimba K. Thaly, Presiding
Officer)

Ref. No. IT/15/2002

Workmen rep. by
The General Secretary,
Gomantak Mazdoor Sangh,
Shetye Sankul,
Tisk, Ponda-Goa.

... Workmen/Party I

V/s

M/s. Cenzer Industries Ltd.,
20-B, Sugra Building, 2nd Floor,
16, Tribhuvan Road,
Mumbai.

... Employer/Party II

Workmen/Party I represented by Shri P. Goankar.

Employer/Party II represented by Adv. Shri P. J.
Kamat.

AWARD

(Passed 24th day of January, 2013)

In exercise of powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) (for short the Act), the Government of Goa by order dated 27-2-2002 bearing No. 28/3/2002-LAB referred the following dispute for adjudication by this Tribunal.

“(1) Whether the action of the management of M/s. Cenzer Industries Ltd., in terminating services of the following Workpersons with effect from 1-10-2001 is legal and justified?

- | | |
|--------------------------------|---------------|
| (1) Mrs. Kavita R. Mayenkar | ... Operator. |
| (2) Mrs. Ujwala V. Dhamarkar | ... -do- |
| (3) Mrs. Geeta G. Bandokar | ... -do- |
| (4) Mrs. Sindhu M. Dhavlikar | ... -do- |
| (5) Mrs. Sumitra S. Shirodkar | ... -do- |
| (6) Mrs. Vimal M. Khorjuvenkar | ... -do- |
| (7) Mrs. Trupti R. Chari | ... -do- |
| (8) Mrs. Tilottama T. Gadekar | ... -do- |
| (9) Mrs. Maria M. Fernandes | ... -do- |
| (10) Mrs. Sandya S. Vernekar | ... -do- |
| (11) Mrs. Anita A. Teli | ... -do- |
| (12) Mrs. Varsha V. Govenkar | ... -do- |
| (13) Mrs. Neeta S. Pednekar | ... -do- |
| (14) Miss Mohini G. Halarnekar | ... -do- |
| (15) Miss Sumitra M. Padte | ... -do- |
| (16) Mr. Yeshwant Morajkar | ... -do- |

- | | |
|-------------------------------|--------------------------|
| (17) Mr. Rama Gawas | ... Security (Watchman). |
| (18) Mr. Tanaji Sarjirao | ... -do- |
| (19) Mr. Leo Fernandes | ... Sweeper |
| (20) Mr. Madhusudan Dhawlikar | ... Supervisor. |

(2) If not, to what relief the workpersons are entitled?”

2. Upon receipt of the reference, IT/15/2002 was registered and notices were issued to both the parties. Upon service of notice, Party I filed the claim statement at Exb. 3, Party II filed the written statement at Exb. 5 and the rejoinder was then filed at Exb. 6.

3. In the claim statement it is in short the case of Party I that M/s. Cenzer Watch Industries Ltd., is engaged in the manufacturing and sales of watches of various models, having a factory at Mapusa-Industrial Estate-Mapusa, Goa and earlier the unit was functioning as M/s. Goa Time Mover Ltd., a subsidiary of Economic Development Corporation of Goa, Daman & Diu Ltd. (EDC). It is stated that vide Memorandum of Understanding dated 15-2-94 M/s. Goa Time Mover was sold to M/s. Jain Watch Industries Pvt. Ltd. represented by its Managing Director, Shri Joit Kumar Jain and at this time the employer agreed to give job security and protect other benefits of the said 94 workers. It is stated that despite this, the employer without any valid reasons terminated the services of the Workmen w.e.f. 1-10-2001. It is stated that the production of Cenzer brand watches and other watches is now being manufactured on job contract. It is stated that the expansion work of the factory building by adding two floors on the existing building also commenced and a new company was formed to manufacture the said watches. It is stated that the company did not stop any export and hence the services of the workers were terminated only to victimize the unionized workers and to implement the unfair labour practices. It is stated that the employer has engaged the new workers in the place of the workers whose services were terminated without offering them re-employment and that Party II has also obtained ISO certification. It is stated that before termination the provisions of the Act were not followed and Party II has violated Section 25F of the Act. Party I has therefore prayed to declare the termination of the workers as illegal, unjustified and bad in law so also as in violation of the terms of memorandum of understanding dated

15-2-94 and to reinstate all the workers with full back wages and continuity of services.

4. In the written statement Party II has denied the case set up by Party I and has stated that due to uneconomic operations and cut throat competition, Party II decided to close down its factory at Mapusa w.e.f. 1-10-01 and as a consequence terminated the services of all the Workmen working in the factory w.e.f. 1-10-01 which was after giving the necessary notice to the concerned authorities in the prescribed form for closure of its factory. It is stated that all the Workmen were offered one month wages in lieu of notice, closure compensation, gratuity, encashment of leave, bonus etc. which some Workmen accepted and nine Workmen refused to accept. It is stated that as there is factum of total and irrevocable closure of the factory, this Court has no jurisdiction to investigate into the reasons of closure and grant any relief to the Workmen. Thus, according to Party II the reference made by the Conciliation Officer is not legal, valid and is liable to be rejected. It is stated that since all the Workmen except nine have accepted their legal dues, the Workmen are barred from raising any dispute in respect of closure of establishment and consequent termination. It is stated that this Court has therefore no jurisdiction to try and entertain the alleged dispute. It is stated that the original, dispute was raised in respect of closure of company's establishment and not regarding termination of services of the Workmen and as there was no demand of the termination of services or the Workmen before the Conciliation Officer, he had no jurisdiction to refer the demand which was not raised by the Union before him and therefore the reference is liable to be rejected. It is stated that since the closure is total and irrevocable no relief of reinstatement or back wages could be granted to the Workmen and thus the reference is ab initio void, illegal and is totally misconceived. It is stated that the company closed down the unit w.e.f. 1-10-01 and retrenched all the Workmen by paying their dues. It is stated that the expansion of the building started prior to closure of the factory and the same has been completed now. It is stated that ISO certificate was in progress but the same is of no use as the unit is already closed. It is stated that upon purchase of factory premises of the erstwhile company, it ceased to be a subsidiary of the EDC. It is stated that for retrenchment on account of closure, no enquiry is necessary. Thus, amongst above and other grounds, Party II has prayed to reject the reference.

5. In the rejoinder Party I has denied the case set up by Party II in their written statement.

6. On the basis of respective averments of the parties, issues dated 20-8-02 at Exb. 7 were framed.

7. In support of its case Party I examined the General Secretary of Gomantak Mazdoor Sangh (for short GMS) Shri Puti Gaonkar as witness No. 1 and Ms. Sindhu M. Dhavlikar as witness No. 2. On the other hand Party II examined Shri Hasmukhraj D. Vardhan as its witness No. 1 and Shri R. Prasad, the Enforcement Officer, Employees Provident Fund Organization as witness No. 2.

8. Heard Shri P. Gaonkar for Party I and Lnd. Adv. Shri P. J. Kamat for Party II. Both the parties also filed written submissions which are on record.

9. I have gone through the records of the case and have duly considered the arguments of both the sides. I am reproducing herewith the issues alongwith their findings and reasons thereof:

Sr. No.	Issues	Reasons
1.	Whether the Union/Party I proves that the termination of services of the Workmen by the Employer /Party II is in violation of the provisions of Sec. 2S-F of the I. D. Act, 1947?	In the negative.
2.	Whether the Union/Party I proves that the termination of services of the Workmen by the Employer/Party II is by way of victimization and unfair labour practice?	In the negative.
3.	Whether the Union/Party I proves that the action of Employer/ /Party II in terminating the services of the Workmen w.e.f. 1-10-2001 is illegal and unjustified?	In the negative.
4.	Whether the Employer/Party II proves that the reference made by the Government is not legal and valid?	In the positive.
5.	Whether the Employer I/Party II proves that the dispute referred is not an industrial dispute and hence the reference is liable to be rejected?	In the negative.

6. Whether the Employer/Party II proves that its establishment is permanently closed from 1-10-2001?	In the positive.
7. Whether the Workmen are entitled to any relief?	In the negative.
8. What award?	As per order below.

REASONS

10. *Issue Nos. 1 and 6:* Both these issues are answered together for the sake of convenience, being interconnected. This is because, the case set up by Party I in the claim statement is that the employer without any *valid reasons* terminated the services of the Workmen w.e.f. 1-10-01 whereas in the written statement it is the defence of Party II that they closed down the unit w.e.f. 1-10-01 and had retrenched all the Workmen including those who are parties to this reference, due to closure and had also paid dues to them.

11. It may be mentioned here that though in the claim statement Party I has not made any reference to the aspect of 'closure' of the factory, in his chief examination, Shri P. Gaonkar has produced at Exb. W3 copy of a letter dated 10-8-01 by stating that vide this letter GMS brought to the notice of Party II that the notice of closure is illegal and unjustified. Exb. W3 reveals that it refers to the notice of closure dated 31-7-01 addressed by Party II to the Secretary Labour with copy to Party I/Union. In this letter Party I has demanded that the closure notice be withdrawn immediately. Thus, it becomes clear that at the time of filing of the claim statement, Party I was very much aware of the reason of termination of services of Workmen w.e.f. 1-10-01 but has still averred in para 2(g) of the claim statement that termination is without any valid reasons.

12. Shri P. Gaonkar has produced at Exb. W4 copy of reply dated 18-8-01 sent by Party II to Exb. W3. In this reply Party II has stated that factory will be closed from 1-10-01 permanently for bonafide reasons; that the notice of closure u/s 25FFA of I. D. Act has been given to the Government on 31-7-01 with copy to Party I and that the Workmen have been informed by a General notice dated 31-7-01 displayed on the factory notice board. It is therefore further clear from the above reply at Exb. W4, that Party I was very much aware of the stand of Party II at the time of filing of the claim statement.

13. It may be mentioned here that in his cross-examination Shri P. Gaonkar has stated that Party I/Union raised the dispute before the management of Party II by letter dated 10-8-01, which is at Exb. W3. He has also stated that copy of Exb. W3 was sent to Labour Secretary. Though Shri P. Gaonkar has denied the suggestions that conciliation proceedings were held based on Exb. W3 and also that except for Exb. W3, no other letter was sent by the Union to the Labour Commissioner, calling for intervention in the dispute, it deserves to be noted that no other letter making demand on Party II, more particularly on the subject of illegal termination of services of Workmen has been made by Party I/Union. That apart, the above statement of Shri P. Gaonkar that they raised the dispute before the Union vide letter at Exb. W3, makes it clear that the core subject of the dispute was issue of closure notice dated 31-7-01 by Party II.

14. Be that as it may, cross-examination of Shri P. Gaonkar reveals that notice of termination dated 27-8-01 was issued to the workers of Party II. Even for that matter, Mrs. Sindhu Dhavlikar has also admitted that Jain Watch Industries which prior to its closure was renamed as M/s. Cenzer Industries Ltd. was closed from 1-10-01. The fact of closure of Party II w.e.f. 1-10-01 is also stated by Shri Hasmukhraj Vardhan, by stating that on 31-7-01 Party II had given notice in Form Q under rule 76-A of the Industrial Disputes (Central) Rules, 1957, required to be given u/s 25FFA of the Act to the appropriate Government with copies to Commissioner Labour, Panaji, General Secretary, GMS and Employment Exchange, Panaji. This notice is at Exb. W2. He has stated that on 27-8-01 Party II had issued individual notices, one month in advance to the Workmen intimating them about closure of factory from 1-10-01 and that their dues such as notice wage, retrenchment compensation u/s 25F of the Act would be paid on 29-9-01 and they were to call on Party II on any working day during the first week of October, '01 for other legal dues. He has stated that out of 20 workpersons, only Mr. Madhusudan Dhavalikar, supervisor accepted the said notice and other 19 refused and hence they were sent registered AD notices on their last known addresses. He has produced the said notices with AD cards at Exb. 23 colly. He has also produced the details calculating all other dues of these workpersons at Exb. 24 colly. It may be mentioned here that the 9 Workmen who had not accepted the letters at Exb. 23 colly, also refused to accept the same when sent under registered AD post, on their

last known address, Shri H. Vardhan has produced these copies at Exb. 26 colly. The statements made by Shri H. Vardhan on the above subject are not denied in his cross-examination.

15. Lnd. Advocate for Party II by referring to the above evidence, submitted that payment of retrenchment compensation u/s 25F is not a condition precedent in case of closure of unit even though Party II had offered the same and only 9 Workmen did not accept it. He relied on the judgment in the case of **Shree Steel Castings P. Ltd. v/s Vasanta 2008 II CLR 84**, the observations in which indicate that in case of closure of unit, application u/s 25F is for a limited period i.e. only for payment of retrenchment compensation and nothing else.

16. There is otherwise no dispute that vide memorandum of understanding dated 15-2-94 at Exb. W1, M/s. Jain Watch Industries Pvt. Ltd. (Party II Company for short), purchased this unit from M/s. Goa Time Movers Ltd., Mapusa Industrial Estate, Exb. W1 also makes it clear that Party II company had agreed to take all the 94 staff members of the erstwhile company as new employment for a minimum period of five years from the date of taking over the unit excluding those who do not wish to join the Party II Company. Records also indicate that Party II Company was then renamed and unit continued to work under the changed name Cenzer Industries Ltd.

17. It is stated by Shri P. Gaonkar that from October, 2001 the production in the factory was stopped in order to carry out the construction in the factory premises. He has stated that Party II was carrying out production in their sister concern situated within the Mapusa Industrial Estate. He has stated that after completing the construction, Party II again started production in its factory premises. Mr. Sindhu Dhavalikar has also stated that production, sales and exports of different brands is still in full swing and the watches are manufactured in other units on contract basis, after terminating the services of the workers in the reference. Shri P. Gaonkar has stated that during the time of construction of premises, Party II had applied for ISO certificate.

18. It may be mentioned here that the statements made by the above witnesses are not supported by any documents. This is because Party II replied Exb. W3 vide reply dated 18-8-01 at Exb. W4 and in this reply they have admitted of renovations and additions being made to the factory building but according to them the same are undertaken with a view to increase its sale value. Similar is the

case as regards to ISO Certification which though Party II has admitted that they have applied for the same, but according to them on account of impending closure, the said certificate would lose its significance. No documentary evidence is brought on record by Party I to show that Party II has obtained the ISO certificate.

19. It is pertinent to note that Party II was taken over on 15-2-94 as per Exb. W1 and the retrenchment on account of closure was done 1-10-01 and therefore Party II had employed the employees for more than five years. Shri P. Gaonkar has produced at Exb. W7 copy of an advertisement published in the magazine 'Trade Post' dated 10-4-03 claiming that it has been published by Party II and in which the office of Party II and the workplace has been mentioned as Plot No. 54, Mapusa Industrial Estate, Mapusa, Goa, to contend that Party II continued with the manufacturing of the watches in the name of 'Cenzer' at the same place. However, in his cross-examination he has admitted that this advertisement is given by M/s. Rishabh Industries. Nevertheless, Shri H. Vardhan has stated that the first floor of the building has been rented out to M/s. Rishabh Industries, a proprietorship concern owned by Mr. Mahendra Kumar Jhumarmal Jain (Bhandari) by sub-lease dated 10-12-01, order of GIDC dated 13-3-02 according sanction to sub-lease, the tripartite deed of sub-lease dated 5-4-02 and he has produced all the relevant documents concening M/s. Rishabh Industries at Exb. 33 colly.

20. In his cross-examination Shri H. Vardhan has denied the suggestion that the factory which is being run in the name of M/s. Rishabh Industries is owned by Rohit Kumar Jain and that only the name of the factory has been changed. This witness has also denied the suggestion that the agreement dated 10-2-01 in the name of M/s. Rishabh Industries is fabricated and that Party II was doing the business in the name of M/s. Rishabh Industries. He has also denied the suggestion that Mr. Mahendra Kumar Jhumarmal Jain (Bhandari) is the family member of J. K. Jain.

21. He has stated that the premises i.e. the ground floor of the building were rented out to M/s. Gull Chem Industries (unit II) w.e.f. 1-1-03 by an agreement dated 1-1-03. He has stated that the Gull Chem Industries was in existence even prior to starting its unit II in the rented premises of Party II and was covered under Employees Provident Fund and Miscellaneous Provisions Act, 1952 (P. F. Act) as well as Employees State Insurance Act, 1948 (ESI Act). He has stated that

the second sub-lease of the said area to Gull Chem Industries was consented by GIDC by its letter dated 7-18-08-2003 and a tripartite deed of sub-lease was signed on 11-12-03. He has stated that the said Gull Chem Industries was owned by Mr. Narayan A. Walawalkar who was issued factory license by the Chief Inspector of Factories and Boilers on 30-9-03. He has stated that this industry was closed w.e.f. 16-2-05 and the notice of closure dated 15-2-05 was issued to Asstt. Labour Commissioner and intimation was also sent to Regional P. F. Commissioner. He has produced all the relevant documentary evidence concerning Gull Chem Industries and to which reference is made above, at Exb. 27, Exb. 28 colly, Exb. 29 colly, Exb. 30 and Exb. 31 colly.

22. He has stated that after surrender of the premises by Gull Chem Industries the same were rented out to M/s. Bharati Teletech Ltd. from 3/7-11-2006 who still continues to occupy the said premises on rent. He has produced the sub-lease agreement dated 9-10-06, order of GIDC dated 3/7-11-2006, tripartite deed of sub-lease dated 3-8-07 and certificate of registration dated 2-11-06 by Dy. Commissioner of Central Excise and dated 29-12-06 by office of Commissionerate of Customs and Central Excise at Exb. 32 colly.

23. He has stated that the second floor of the building was rented out to M/s. Prerana Industries, a proprietorship concern owned by one Mr. Srinivas Ganagadhar Mittapalli by agreement dated 1-7-03; that the said unit is closed from 7-7-05 and the premises have been surrendered back to Party II. He has produced the lease agreement dated 1-7-03, order of GIDC dated 7/9-12-04, letters dated 13-9-05 to RPFC, Panaji and RD, ESIC, Panaji intimating temporary closure of the unit, letter dated 2-11-05 to Directorate of Industries and Mines and letter dated 4-11-05 to the Chief Inspector of Factories and Boilers, Panaji intimating about closure at Exb. 34 colly.

24. In his cross-examination Shri H. Vardhan has stated that he knows Narayan Walawalkar but he does not know whether he was the consultant of the company and used to attend the meetings before the Labour Commissioner in the factory. He has stated that he does not know whether said Shri Walawalkar was working as contractor for Party II for assembling the watches and calculators etc. He has denied the suggestion that premises were infact not rented to Gull Chem Industries; that the agreement dated 1-1-03 is fabricated and that manufacturing process was being carried out by Party II in the name of

Gull Chem Industries only to defeat the demands of Party I.

25. As regards M/s. Prema Industries Mr. H. Vardhan has stated that he does not know Srinivas Mittapalli; that he does not know whether Mittapalli was residing in Goa or if he was working in Corporate office of Joit Kumar Jain, MD of Party II, at Bombay. He has denied the suggestion that agreement dated 1-7-03 in the name of Prerana Industries is fabricated and that Party II has continued manufacturing process in the name of Prerana Industries.

26. It is pertinent to note that though the above allegations as regards the above units have been levelled against Party II by Party I, no cogent and convencing evidence has been brought on record in support of the suggestions put, while cross-examining Shri H. Vardhan. It may be mentioned here that mere putting of suggestions to the adverse party would not mean that the case of party putting the suggestions stands established but on the contrary burden lies on the party putting the suggestions, to prove those suggestions by bringing on record the required evidence. Being so, there appears to be no substance in the case tried to be projected by Party I through the cross-examination of Shri H. Vardhan.

27. Even for that matter, perusal of Exb. W7 makes it clear that there are many factories of M/s. Rishabh Industries throughout India and as rightly stated by Lnd. Advocate for Party II, merely because the surname of the proprietor of M/s. Rishabh Industries is Mr. Jain and that of Party II is also Mr. Jain, one cannot relate both these persons, to each other, in the absence of the evidence to say so. As regards the case suggested by Party II that the agreements dated 10-2-01, 1-1-03 and 1-7-03 are fabricated, in my view, strong and cogent evidence is required to prove fabrication of any document, which is lacking in this case. Even otherwise, Party II has not denied the existence of all the companies to whom the premises of Party II has been leased out but according to Party I, Party II is carrying out manufacturing process in the name of said industries.

28. Be that as it may, from the documentary evidence relating to all the units to whom the premises have been rented out to Party II, it becomes clear that the units to whom the premises have been rented out after the closure of Party II unit where all independent units as each of the said units have been registered separately under

various Acts and that the lease agreement entered into with them are consented by Goa Industrial Development Corporation.

29. Now, coming to the contention of Party I that after the closure of Party II, the work is got done on job contract, even in such case, as rightly pointed out by Lnd. Advocate for Party II, the closure cannot be held to be bad or illegal as Party II himself does not carry out any manufacturing activities. In the above context, Lnd. Advocate for Party II relied on the judgment in the case of **M/s. Sur Iron and Steel Company Pvt. Ltd. v/s M/s. Sur Iron and Steel Company Pvt. Ltd. and Anr. SCLJ 1950-83 Vol. 7, 97** in which it is held that after the closure of the factory if the company starts doing another type of business of obtaining articles manufactured by other manufacturers of the same type which the company was earlier manufacturing, stamp them with its own trade mark and sell in the market, the said closure is said to be bonafide in the sense that the company infact ceased to carry out that industry.

30. Shri P. Gaonkar relied on the judgment in the case of **Biddle Sawyer Ltd. v/s Chemical Employees Union 2007 III LLJ 391** contending that closure would mean permanent closure of place of employment or part thereof and not only a building or factory. To my mind, since in the case in hand Party I has failed to prove that manufacturing by Party II is going on under the garb of closure, and also taking into consideration the positive evidence produced by Party II, on the subject of closure, I am of the considered opinion that this judgment is of no use to Party I.

31. He also relied on the judgment in the case of **D. S. Vasavada, Textile Labour Association, Ahemadabad v/s Regional Provident Fund Commissioner, Gujrat State, Ahmedabad, 1995 1 LLJ 263** the ratio in which indicates that cessation of work by an employer by closing his mill may not by itself terminate the services of employees and that a valid closure alone puts an end to the services of the employee. In the case at hand closure by Party II is in accordance with the provisions of I. D. Act and therefore the above observations cannot be made applicable to this case.

32. He relied on the judgment in the case of **MAMC Sramajibi Union and Anr. v/s Union of India and Ors. 2002 II LLJ 735** in which it is observed that reasons for closure should be adequate, sufficient and in good faith and should not be unfair or unjust and not prejudiced to the

interest of public at large. It may be mentioned here that it is not the case of Party I herein in the claim statement that the reasons for closure are not as required above and therefore the observations in this judgment cannot be imported in this case.

33. He also relied on the judgment in the case of **Industrial Perfumes Limited v/s Industrial Perfumes Workers Union 1998 LLR 691**, in which the petitioner, a subsidiary of Hindustan Lever Limited was closed and the Workmen had contended that the closure was not bonafide and infact there was no closure. On the basis of evidence in this case, it was revealed that though the plant was closed the business of the company was not closed down and manufacture of items in respect of which company holds license was being carried on either at the plant of Hindustan Lever Ltd. of which it is a subsidiary at Taloja or through the General Perfumes. Thus, on the above basis it was held that there was no closure of business. It is also observed in this judgment that Court can consider whether in fact the closure is real or genuine or whether in fact there is a closure at law. It is also observed that courts today can lift the veil to see what was behind it. It may be mentioned here that the ratio in each case has to be read viz-a-viz the facts in that case. In the case in this judgment the Union representing the workers had filed the complaint that closure is not bonafide and infact there was no closure. In our case, Party I/Union in their claim statement is silent on the subject of closure though they have made demand on Party II to withdraw the closure notice. Even otherwise, no positive evidence have been led by Party I to establish that closure was not real or genuine and the evidence brought on record by Party II has been merely denied without proving the case setup through the suggestions. Thus, the ratio in this case cannot be applied to our case.

34. He also relied on the judgment in the case of **General Labour Union (Red Flag) Bombay v/s B. V. Chavan and Ors. 1985 1 LLJ 82 (SC)** contending that the true test to be applied on the basis of evidence is whether the closure was a device or pretence to terminate services of Workmen or whether it is bonafide and for reasons beyond the control of employer. In the present case notice of closure is produced by Shri P. Gaonkar at Exb. W2. As per this notice all the Workmen are informed that on account of continued uneconomic operations of the unit coupled with cut throat competition in the market and its consequent non-viability it has been decided to close down the

establishment at Mapusa and retrenched the Workmen w.e.f. 1-10-01. Shri P. Gaonkar has stated that this notice was issued by Party II only to deprive the workers of layoff compensation for the period of the construction of the factory premises which the Party II intended to carry out. It is interesting to note that no statement as above is found made by Party I in the claim statement and even for that matter, Shri H. Vardhan has made it clear that he does not know the reason behind the closure of the factory. No evidence has been lead or brought on record in the cross-examination of the witnesses of Party II to establish that falsity of the contents of Exb. W2 by suggesting otherwise. Thus, as required by the judgment in the case of **General Labour (supra)** there is no evidence to test whether the closure was a device or pretence to terminate the services of the Workmen. Hence this judgment is of no help to Party I to establish their case.

35. In the cross-examination of Shri H. Vardhan, he was shown the balance sheet for the year ending 31-3-2003 which Shri Vardhan, admitted and it is marked as Exb. 36. Perusal of Exb. 36 reveals that loss before tax for the year 2002-2003 after closure of the unit was ₹ 12,29,815.94 and it also shows the income from sales and other income. This document further shows that for the year 2002-03 there was no manufacturing costs and expenses nor sales from manufacturing activities. I find force in the submissions of Lnd. Advocate for Party II that even after the unit was closed the other residual works such as sale of finished products, receipts of unpaid bills, settlement of outstanding bills etc. would continue. Nonetheless, it is apparent from Exb. 36 that there has been closure of the manufacturing process. This being the case, the reasons for closure mentioned in the Profit and Loss Account and Balance Sheet does not matter, and what is material is the factum of closure.

36. That apart, Mrs. Sindhu Dhavalikar has admitted the factum of closure and therefore in the light of the judgment in the case of **Asian Paints India Ltd. v/s Mazdoor Kranti Union and another 1997 II CLR 1053** if the factum of closure is not in dispute, the reference is not maintainable.

37. In his arguments, Shri P. Gaonkar stated that the total number of workers engaged by Party II during preceding 12 months was more than 100 and hence before retrenchment, the permission of the appropriate Government was mandatory. He stated that Party II did not obtained such permission and therefore the termination is illegal.

Lnd. Advocate for Party II denied the above contentions of Shri P. Gaonkar and stated that there is no evidence on record to come to the conclusion that Party II has violated Section 25K(1) of the Act.

38. Perusal of evidence on the above subject indicates that Shri H. Vardhan has produced the muster roll at Exb. 22 colly and has admitted that it is only of the permanent employees. He has stated that there was no muster roll for the temporary workers. Shri R. Prasad has produced Form 6A in respect of GOA/11520 (M/s. Cenzer Industries Ltd.) for the period 2000-01 and 2001-02 at Exb. 39 colly. In his cross-examination he has stated that Exb. 39 colly was prepared by the management and sent to the office of Provident Fund; that the office of Provident Fund did not confirm the veracity of the information given in Exb. 39 colly; that he does not know whether the names furnished by management in Exb. 39 colly were only those of permanent employees and whether the management had not furnished the names of 50 other temporary employees who were working for Party II.

39. Undoubtedly, Exb. 22 colly shows in it less than 100 employees so also Exb. 39 colly. No other evidence is adduced by Party I to show otherwise and more particularly to prove that there were other 50 temporary employees whose names are not mentioned by the management in Exb. 39 colly. Merely because the office of the Provident Fund did not confirm the veracity of the information given in Exb. 39 colly, it would not be proper to jump to conclusion that the information is incorrect. This is because, it is not stated by Shri R. Prasad that the office of Provident Fund was prevented by Party II from verifying the correctness of Exb. 39 colly.

40. That apart, Lnd. Advocate for Party II also submitted that Mathadi workers and contractors workers cannot be included in computing the total number of Workmen employed on an average per working day for last 12 months u/s 25K(1) of the Act. In support of his submission he relied on the judgment in the case of **Dyes and Chemical Workers Union, Mumbai v/s Bombay Oil Industries Ltd. and Anr. 2001 (89) FLR 638** in which it is observed as under:

".....In the result, we answer the question referred to us as under:- (i) For the purpose of computation of the total No. of Workmen employed on an average per working day for the last 12 months, as contemplated u/s 25K(1) of the Industrial Disputes Act only persons who answer the definition of

"Workmen" as contained in Section 2(s) of the Industrial Disputes Act, are liable to be included. Mathadi Workmen and contractors workers cannot be included in computing such number. As far as "Workmen" of other industrial establishments are concerned, they can be included only if there is functional integrality between the industrial establishments whose case u/s 25K is being considered and such other establishments."

41. It is therefore clear from above, that Party I has failed to prove that the termination is illegal on account of non-compliance of Section 25K(1) of the Act, by Party II.

42. At any rate, since discussion supra makes it clear the establishment of Party II is permanently closed from 1-10-01 and also that Party II has even otherwise complied with the provisions of Sec. 25F of the Act, issue No. 1 is answered in the negative whereas issue No. 6 is answered in the positive.

43. *Issue No. 2:* In para 2(i) of the claim statement it is the case of Party I that Company did not stop any export and that the services of the Workmen have been terminated only to victimize the unionized workers and to implement unfair labour practices. In the written statement, Party II has denied the above averment of Party I. In his evidence Shri P. Gaonkar has except for saying that Party II has retrenched the services of the Workmen only to victimize them, has not given any details on this subject. Even for that matter, no suggestion on the subject of victimization of the workers have been put to the witnesses of Party II. It is held in the judgment in the case of **M/s. Bharat Iron Works v/s Bhagubhai Balubhai Patel and Ors. AIR 1976 SC 98** as under:

"..... The onus of establishing a plea of victimization will be upon the person pleading it. Since a charge of victimization is a serious matter reflecting, to a degree, upon the subjective attitude of the employer evidenced by acts and conduct, these have to be established by safe and sure evidence. Mere allegations, vague suggestions and insinuations are not enough. All particulars of the charge brought out, if believed, must be weighed by the Tribunal and a conclusion should be reached on a totality of the evidence produced"

44. Also, no evidence has been adduced by Party I on the subject of implementation of unfair labour practice by Party II. Being so, this issue stands answered in the negative, for want of evidence.

45. *Issue No. 3:* Since vide findings on issue No. 6, it is held that the establishment of Party II is permanently closed from 1-10-01 after complying with the provisions of the Act, the termination of the services of the Workmen cannot be called as illegal and unjustified. Hence my findings.

46. *Issue No. 4:* It is the pleading of Party II in the written statement that as a consequence of closure of factory w.e.f. 1-10-01, the company has given necessary notice to the concerned authorities and has offered one month wages in lieu of notice, closure compensation, gratuity, encashment of leave, bonus etc. which some Workmen have accepted and 9 Workmen have not accepted and therefore according to Party II this is a total and irrevocable closure of company's activities at its address. It is further the case of Party II that the reference made by the Conciliation Officer for deciding the legality of termination of services of the Workmen is therefore totally misconceived, illegal and liable to be rejected. It is further the case of Party II that due to the aforesaid reason, the question of going into the legality of closure, therefore, does not arise.

47. In the judgment in the case of **Indian Hume Pipe Co. Ltd. v/s their Workmen AIR 1960 SC 1002** it is observed as under:

"In our opinion, it was not open to the Tribunal to go into the question as to the motive of the appellant in closing down its factory of Barakar and to inquire whether it was bonafide or malafide with some oblique purpose, namely, to punish the Workmen for the Union activities in fighting the appellant. It has been laid down by this Court in a series of decisions that it is not for Industrial Tribunals to inquire into the motive to find out whether the closure is justified or not".

48. I have already discussed while answering issue Nos. 1 and 6 that Party II had succeeded in establishing that there is a total and irrevocable closure of the factory and therefore in view of the observations in the judgment in the case of **Indian Hume Pipes (supra)** the question of going into the legality of closure does not arise. Thus, for the aforesaid reasons the reference made to this Court is not legal, valid and is liable to be rejected. Hence my findings.

49. *Issue No. 5:* it is pointed out by Lnd. Advocate for Party II, that for existence of the dispute there has to be demand by Party I on Party II. I have already discussed while answering issue Nos. 1 and 6, by referring to Exb. W3 that

by this letter Party I has requested Party II to withdraw the closure notice immediately. Undoubtedly, this letter does not demand reinstatement of the workers in service. In the context of above, Lnd. Advocate for Party II relied on the judgment in the case of **Sindhu Resettlement Corporation Limited v/s Industrial Tribunal, Gujrat and Ors. 1968 LIC 526**, in which the Apex, in the facts of that case has observed that the Conciliation Officer has reported to the Government that an industrial dispute did exist relating to the reinstatement of respondent No. 3 and payment of wages to him from 21-2-58 but during adjudication before the Tribunal no evidence was brought to indicate that such dispute had been raised by the respondent with the management. It is held that if no dispute at all was raised by the respondent with the management, any request sent by them to the Government would only be a demand by them and not an industrial dispute between them and their employer. It is also observed that a mere demand to the Government, without a dispute being raised by the Workmen with their employer, cannot become an industrial dispute. It is further held that in such situation the State Government committed an error by making a reference by basing its opinion on material which was not relevant to the formation of opinion.

50. On the other hand, Shri P. Gaonkar relied on the judgment in the case of **Shambu Nath Goel v/s Bank of Baroda, Jullundur 1978 1 LLJ 484** contending that making a demand for reinstatement is not a sine qua non for an industrial dispute to come into existence and to insist on such a procedure would tantamount to re-write the section. Upon going through this judgment, it is noted that the Workman on dismissal had initiated the conciliation proceedings through the Union and the dispute came to be referred for adjudication to the Tribunal. The management took the plea that the Workman had not sought reinstatement and as such the reference was bad. Thus, the above observations pointed out by Shri P. Gaonkar, came to be made by the Apex Court.

51. It is pertinent to note that the judgment in the case of **Sindhu Resettlement (supra)** has been discussed in the judgment in the case of **Shambu Nath Goel (supra)** by observing that the question whether in case of an apprehended dispute, the Government can make reference u/s 10(1) was not examined in the case of

Sindhu Resettlement (supra). It is observed that the question whether an industrial dispute exists at the day of reference is a question of fact to be determined on the material placed before the Tribunal. It is observed that it is for the Government to be satisfied about existence of the dispute and the Government does appear to be satisfied. It is held that it would be open to the party impugning the reference that there was no material before the Government and it would be open to the Tribunal to examine the question, but that does not mean that it can sit in appeal over the decision of the Government and come to a conclusion that there was no material before the Government.

52. In the case at hand, as rightly pointed out by Shri P. Gaonkar, the minutes of the meeting at Exb. W5 recorded by the Additional Labour Commissioner, make it clear that the Union had stated that the termination of the workpersons by engaging contractual services to the manufactures the watches of Cenzer brand is illegal, unjustified and bad in law and therefore the workers are entitled for reinstatement with full back wages and continuity in service. The Additional Labour Commissioner has also mentioned In Exb. W5 that there was no meeting point and hence the proceedings ended in failure. It is therefore clear from the above records, that the Government was satisfied about the apprehended dispute while making the present reference and it is therefore in such situation, the reference to decide whether the action of management of Party II in terminating the services of the workpersons whose names are mentioned in the schedule, is legal and justified, has been, so worded. This being the situation, it would not be proper and justified to hold that the dispute referred is not an industrial dispute and hence this issue is answered in the negative.

53. In the result and in view of discussion supra, I pass the following.

ORDER

1. It is hereby held that the action of the management of M/s. Cenzer Industries Ltd. in terminating services of the following Workpersons with effect from 1-10-2001 is legal and justified.

- (1) Mrs. Kavita R. Mayenkar ... Operator.
- (2) Mrs. Ujwala V. Dhamarkar ... -do-
- (3) Mrs. Geeta G. Bandokar ... -do-
- (4) Mrs. Sindhu M. Dhavlikar ... -do-
- (5) Mrs. Sumitra S. Shirodkar ... -do-

(6) Mrs. Vimal M. Khorjuvankar ... Operator.	Smt. Mrs. Rameshwari R. Teli,
(7) Mrs. Trupti R. Chari ... -do-	C/o. Mr. Ramdas Teli, H. No. 2206,
(8) Mrs. Tilottama T. Gadekar ... -do-	Gothneshwar Wado, Bordem,
(9) Mrs. Maria M. Fernandes ... -do-	Bicholim-Goa. ... Workman/Party I
(10) Mrs. Sandya S. Vernekar ... -do-	V/s
(11) Mrs. Anita A. Teli ... -do-	M/s. Phil Corporation Ltd.,
(12) Mrs. Varsha V. Govenkhar ... -do-	Thivim Industrial Estate,
(13) Mrs. Neeta S. Pednekar ... -do-	Karaswada, Mapusa-Goa. ... Employer/Party II
(14) Miss Mohini G. Halarnekar ... -do-	Party I/Workman represented by Shri Subhash Naik
(15) Miss Sumitra M. Padte ... -do-	George.
(16) Mr. Yeshwant Morajkar ... -do-	Party II/Employer represented by Adv. Shri P. J.
(17) Mr. Rama Gawas ... Security (Watchman).	Kamat.
(18) Mr. Tanaji Sarjirao ... -do-	
(19) Mr. Leo Fernandes ... Sweeper	
(20) Mr. Madhusudan Dhawlikar ... Supervisor.	

AWARD

(Passed on 8th January, 2013)

In exercise of powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), (for short 'the Act'), the Government of Goa by order dated 13-11-07 bearing No. 28/3/2007-LAB-1162, has referred the following dispute for adjudication.

- The above Workpersons are therefore not entitled for any relief.
- No order as to costs.

Inform the Government accordingly.

Sd/-
(B. K. Thaly),
Presiding Officer,
Industrial Tribunal-
cum-Labour Court.

Notification

No. 28/1/2013-Lab/191

The following award passed by the Industrial Tribunal and Labour Court, at Panaji-Goa on 08-01-2013 in reference No. IT/114/07 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

D. S. Morajkar, Under Secretary (Labour).
Porvorim, 22nd April, 2013.

IN THE INDUSTRIAL TRIBUNAL AND
LABOUR COURT
GOVERNMENT OF GOA
AT PANAJI

(Before Smt. Bimba K. Thaly, Presiding
Officer)

Ref. No. IT/114/07

“(1) Whether, Mrs. Rameshwari R. Teli, Officer, could be construed as “Workman” as defined under clause(s) of Section 2 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947)?

(2) If the answer to the issue No. (1) above is in the affirmative, then, whether the action of the management of M/s. Phil Corporation Limited, Thivim Industrial Estate, Karaswada. Mapusa, Bardez-Goa, in terminating the services of Mrs. Rameshwari R. Teli, with effect from 22-07-2006, is legal and justified?

(3) If the answer to issue No. (2) above is in the negative, then, to what relief the Workman is entitled?”

2. Upon receipt of the reference, IT/114/07 was registered. Notices were issued to both the parties under registered A/D post upon which both the parties were served Party I filed the statement of claim at Exb. 5. Party II filed the written statement at Exb. 6. Rejoinder was filed by Party I at Exb. 7.

3. In the statement of claim, it is the case of Party I that she was engaged as Officer with Party II. That she was employed since 30-12-1983. Initially she was appointed as Junior Assembler and at that time her maiden name was Ms. Shubhangi Datye. That she was promoted as Junior Officer in 1995 and then as an officer in 2001. At

the time of termination, she was working at Valpoi factory of Party II where she worked since August, 2005 till the date of termination. That she performed following duties with Party II.

- a. She worked in production department and she fed the production report into the computer.
- b. She did packing of semi-finished and finished products.
- c. She did documentation.
- d. She reported to Mr. Sanjay Shinde, Manager, and carried out whatever instructions were given to her by him.
- e. She would carry out whatever work was allotted by Mr. Sanjay Shinde, Manager.
- f. All the duties performed by Party I were of "Workman" as defined in Industrial Disputes Act, 1947.

4. It is further the case of Party I that on 22-7-06 when she was issued a letter of the same date stating that her services were terminated with immediate effect. It is stated that at the time of termination no one months notice was given to her and no retrenchment compensation so also no leave wages were paid to her. It is stated that the management also did not prepare a seniority list and follow the principle of "last come, first go" before terminating her services and thus violated provisions of Sections 25F and 25G of The Act. It is stated that Party I addressed several letters to Party II demanding that the termination be set aside and she be reinstated in service with full back wages and continuity of service and also raised industrial dispute with Asstt. Labour Commissioner, Mapusa, Goa, however no settlement was arrived at and dispute came to be referred to this Tribunal. Party I has therefore prayed to hold that her termination is illegal and unjustified and to reinstate her in service with full back wages and continuity of service with costs and also to grant subsistence allowance of 50% wages pending adjudication, by way of interim relief.

5. In the written statement Party II has denied the case set up by Party I in the claim statement and has stated that the reference is not maintainable as Party I is not a Workman as defined u/s 2(s) of the Industrial Disputes Act, 1947. It is also stated that the factories at Thivim and Bicholim of Party II are closed from May, 2006 and factory unit No. 2 at Valpoi has been closed from July, 2006, which closure has been accepted

by the Workmen, staff and officers of the Party II and as such no relief after the date of closure would be granted.

6. It is further stated that as Party II was making losses, at the instance of the Board of Directors, it has been considered as a sick industrial company in terms of Sec. 3(1)(o) of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short SICA). It is stated that when the reference is registered and the Board for Industrial and Financial Reconstruction has declared Party II as a sick industry, the provisions of Sec. 22 of SICA would be attracted.

7. It is also the case of Party II that right from time of the promotion of Party I as a Junior Officer, she was not a member of the Union, as she was in supervisory category and being so she was also not governed by the certified standing orders of the Party II. It is stated that as a Junior Officer the duties of Party I were to supervise the work of the Workmen working in the production section and that the conditions or service, emoluments, benefits of the Party I were all together different from the workers category. It is stated that all the jobs such as to convert the films and papers, packing the finished goods, documentation of the goods produced, inspection of the packaging material, films, papers once they are packed, documentation of quality manuals, system procedure manuals, conduct internal quality audit were performed by the technicians, clerks employed in the production section with the help of helpers, peons under the supervision of Party I. It is stated that Party I was discharged with one months notice wage in lieu of notice and ex-gratia compensation and that Party I accepted and encash the said cheque. It is stated that Party I was reporting to the Manager for administrative purposes but all the instructions to the workers were given by Party I and got the work under her supervision. Thus amongst above and other grounds, Party II has prayed to reject the reference.

8. In the rejoinder, Party I has denied the averments made by Party II in their written statement.

9. Based on the above averments, issues at Exb. 9 were framed on 7-10-08.

10. In the course of evidence, Party I examined herself as witness No. 1 and Shri Narayan Mone as witness No. 2 and closed her case. On the other hand, Party II examined Shri B. S. Sridhara as witness No. I and closed the case.

11. The representatives of both the parties filed written submissions as well as advanced oral arguments.

12. I have gone through the records of the case and have duly considered the submissions of both the learned representatives.

13. I am reproducing herewith the issues along with their findings and reasons thereof.

Sr. No.	Issues	Findings
1.	Whether the Workman/Party I proves that she was a "Workman" as defined u/s 2(s) of the Industrial Disputes Act, 1947?	In the negative.
2.	Whether the Workman/Party I proves that the action of Party II/Employer in terminating her services of the w.e.f. 22-07-06 is illegal and unjustified?	In the negative.
3.	Whether the Employer/Party II proves that the present order of reference is bad in law as stated in para 2(b) of their written statement?	In the positive.
4.	Whether the Party I is entitled to any relief?	In the negative.
5.	What Award?	As per order below.

REASONS

14. *Issue Nos. 1 & 2:* Both these issues are answered together for the sake of convenience as they are interconnected.

15. It otherwise cannot be disputed that the burden to prove that she is a 'Workman' within the meaning of Section 2(s) of The Act is on the Party I. In the above context, learned advocate for Party II has rightly relied on the judgment in the case of **S. T. Galande v/s P. O. Ind Labour Court, Pune 2008 (I) CLR 656** in which the Hon'ble High Court of Bombay has observed as under:

".....It is settled principle of law that the onus lies upon the Workman to prove that he satisfies the essential ingredients of being a Workman and, therefore, could raise an industrial dispute....."

16. Lnd. Advocate for Party II has also relied upon the judgment in the case of **H. R.**

Adyanthaya and others v/s Sandoz (India) Ltd., 1994 II CLR 552 in which the constitutional bench of the Hon'ble Supreme Court has held as under;

".....a person to be a Workman under the said act must be employed to do the work of any category, viz. manual, unskilled, skilled, operational, clerical, supervisory (drawing less than ₹ 1,600/- p.m.) or technical. It is not enough that he is not covered by either by the four exceptions to the definition."

17. Thus, from the above settled proposition of law it becomes clear that the person claiming to be a "Workman" must come within the ambit of Section 2(s) of the Act. It is also clear that irrespective of the designation, it is the actual work done by the employee which is determinative of whether he falls within the scope of the definition of "Workman" under Section 2(s) of the Act and the burden to establish the same lies on the Workman.

18. It may be mentioned here that the outcome of issue No. 2 would depend on the outcome of issue No. 1 and this is because if Party I succeeds in proving issue No. 1 it is only then the decision on issue No. 2 would be material or else Party No. 1 would fail in proving issue No. 2.

19. Party I has in para 3 of her affidavit in evidence specified the duties performed by her which are that she worked in production department and fed the production report into the computer; did packing of semi finished and finished products; did documentation etc. In her cross-examination, her above statements are denied by Party II by suggesting that Party I was supervising the work of the workers subordinate to her. This is because she had stated in her cross-examination that when she was working in the production department or Party II, in the said department there were categories of Workmen namely Jr. fitters, fitters, Jr. turners, turners, Jr. assemblers, assemblers, Jr. packers, packers, Jr. operators, operators and so on and that these categories of Workmen were entrusted with specific work to be done by them. It may be mentioned here that except for making the bare statements on the subject of the duties performed by her, Party I has not produced any documentary or other evidence to substantiate her said stand.

20. There is otherwise no dispute that Party No. 1 was initially appointed as Jr. Assembler w.e.f. 23-12-1983 vide letter of the same date produced by Party I at Exb. W-1; that she was promoted as Assembler vide letter dated 2-10-92 w.e.f. 1-10-92

which Party I has produced at Exb. W-4; that thereafter she was promoted as Jr. Officer (M-A) vide letter dated 28-4-95 w.e.f. 1-4-95 which Party I has produced at Exb. W-5 and then to Officer vide letter dated 4-10-01 w.e.f. 1-7-01 which she has produced at Exb. W-8. It is also not in dispute that she worked as such till the date of termination of her services w.e.f. 22-7-06. It is also not in dispute that at the time of termination of her services, Party I was drawing wages of ₹ 7,930/- per month.

21. Be that as it may, the letter of appointment given to Party I by Party II at Exb. W-1 does not speak about the duties allotted to Party I and even Exb. W-4 and Exb. W-5 and Exb. W-8 do not speak about the duties allotted to Party I.

22. Learned representative of Party I, Shri Subhash Naik George has contended that the relevant documentary evidence relating to the duties performed by Party I is in possession of Party II and therefore it was for Party II to have produced the same. I find no force in the above contention of Learned representative, Shri Subhash Naik George for the reasons that undoubtedly, the burden to prove that she is a Workman is on Party I and that too by adducing positive evidence and in case Party I was not in possession of the required documents towards its proof, it was for her to make application requesting the Court to direct Party II to produce those relevant documents or to notify Party II to produce these documents, which Party I has failed to do. Thus, it is apparent that no attempt has been made by Party I to establish the nature of duties performed by her as a "Workman", by adducing cogent and convincing evidence. In the above context, I would rely on the judgment in the case of **U. P. State Electricity Board and another v/s Aziz Ahmad 2009 I CLR 690** the Workman in which case had claimed 'equal pay for equal work' on the basis of the contention that his post as 'Boiler overhauling Mechanic' is equivalent to the post of 'Boiler mistry'. This contention was accepted by the Tribunal and even the Writ Petition filed by the employer was dismissed. However, the Apex Court held that the burden to prove that both the posts are equal was on the Workman. Apex Court observed as under:

".....The aforesaid findings are incorrect and cannot be upheld. The burden prove that a particular fact is always on the person who alleges the same. In the present case it was the contention of the respondent-Workman, who claimed that the job requirements, nature and responsibilities of the post of Boiler Mistry/

/Fitter are identical and similar with that of the Boiler Overhauling Mechanic. The burden, therefore, was on the Workman to prove and establish the aforesaid facts by leading cogent and reliable evidence. He was required to place documentary evidence in support in the same..."

23. Perusal of evidence of Party I and more particularly her cross-examination reveals that till date she was working as an Assembler, she was the member of Phil Corporation Ltd., Employees Union (for short the Said Union); that the said Union used to espouse the cause of its members before the management and other competent authorities; that from the date of promotion to the post of Jr. Officer (M-A) she ceased to be the member of the said Union; that since her promotion as Jr. officer (M-A) she became the member of Phil Corporation Staff Union and that the Jr. Officers, Officers, Executives and others in management cadre were the members of the Phil Corporation Staff Union. Even Shri Narayan Mone has stated in his cross-examination that he was promoted by Party II as Jr. Officer in the year 1995 and Party I was promoted as Jr. Officer w.e.f. 1-4-95. He has admitted that before promoting him and Party I as Jr. Officers, they were the members of the said Union and they ceased to be as such from the date of their appointment as Jr. Officers.

24. That apart, in her cross-examination Party I was shown the leave cards of Shri Dinesh Mandrekar, Ms. Surekha Kanekar, Ms. Pranita Kopkar, Shri Umesh Raut, Ms. Shriya Pednekar, Ms. Anita Karnat, Shri Ulhas Chari, Ms. Leena D'souza, Ms. Tilan Prabhu, Shri Kamlakant Azrekar and Shri Navnath Gaonkar for different years and which are produced on- record at Exb. E-1 to Exb. E-22 and Party I has identified her signatures at certain places on the above leave cards in the "Approval Dept. Head" column. She has however stated that she had sanctioned the leave in Exb. E-1 to Exb. E-22 at the instructions of the departmental head of the Party II and that her departmental head had given her permission to sanction the leave of the Workmen. It may be mentioned here that Party I has suggested to Shri B. S. Sridhara that the Manager Mr. Sanjay Shinde was on leave during the period when Party I had sanctioned the leave as per Exb. E-1 to Exb. E-22, which suggestion has been denied by Shri B. S. Sridhara.

25. To my mind, no departmental head would permit a 'Workman' to sanction the leave of other workers if the said person does not fall in the category of non Workman. In this case Party I has

otherwise not brought on record any documentary evidence indicating that Mr. Sanjay Shinde was on leave during the period when Party I sanctioned the leave as per Exb. E-1 to Exb. E-22. Thus, I am of the opinion that Party I has totally failed to prove that she sanctioned the leave as above, despite she being a Workman. Even for that matter, as rightly submitted by Lnd. Advocate for Party II, leave is sanctioned to an employee only after assessing the exigencies and load of work of an officer who ordinarily supervises the work of the employees asking for leave. Thus, this aspect goes to indicate that the duties performed by Party I were of supervisory nature.

26. Reference deserves to be made in the case of **Karnataka Bank Ltd. v/s Sunita B. Vatsaraj (Smt.) 2007 II CLR 650** in which after considering the various authorities on the issue of Workman and non-Workman the Hon'ble High Court of Bombay (DB) has held that an employee would be regarded as performing the supervisory duties only if he is required to supervise the work of one or more of the employees working under him; that supervision means direction and control and that the concerned employee must have power to supervise, direct and control the work of any other employee or employees working under him. It is further held that power to sanction leave is of considerable importance in any organization.

27. Be that as it may, Party I has stated in her cross-examination that Party II had signed the wage settlement with the said Union and that till she was working as an Assembler, she was given the benefits of the settlement signed by the Party II with the said Union. The memorandum of above settlement alongwith Annexure I is brought on record in the cross-examination of Party I at Exb. E-23 colly. It is stated by Party I that as per Exb. E-23 colly, in the categories of Workman, the lowest scale of pay is 190-2815 and highest is 865-4240. She has stated that the hierarchy in the category of Workman is from peons, helpers and police is grade I to selection grade in grade VI. She has admitted that in the category of Jr. Officer (M-A), she was given the scale of pay of ₹ 1,500-3,375 and that this pay scale is nowhere appearing in Exb. E-23 colly. She has further admitted that the designation of Jr. Officer and above are not appearing in Exb. E-23 colly. Thus the above statements brought on record in the cross-examination of Party I weigh in favour of Party II for saying that Party I falls in non-Workman category. The above statements of Party I also make it clear beyond doubt that since the time of her

appointment, she was not falling in the category of Workman as otherwise she would definitely raise an issue on the subject.

28. As regards the contention of Party I in the claim statement, that at the time of termination no one months notice was given to her, it is seen that Party I has produced at Exb. W-10, a copy of letter dated 22-10-06 wherein it is mentioned that a cheque for one months pay in lieu of the notice as per the terms of appointment of Party I, plus ₹ 24,500/- as ex-gratia compensation has been enclosed. Party I has admitted of having received a letter at Exb. W-10 and has further made it clear that she has encashed the said cheque issued by Party II. It is therefore clear that the grievance of Party I about non-giving of one months notice to her, by Party II, does not stand.

29. It may be mentioned here that though it is the contention of Party I that she was not paid retrenchment compensation as provided u/s 25F of the Act, since discussion above reveals that Party I has failed to prove issue No. 1, I find force in the statement made by Shri B. S. Sridhara that it is for this reason, the benefit of Section 25F was not given to her.

30. That apart, if one believes the case of Party I that even after her promotion as Junior Officer (M-A) and as Officer, she was doing the work in the category of Workman then, as rightly submitted by Learned Advocate for Party II, there was no reason for Party II to promote Party I from Assembler to Junior Officer (M-A) and Officer. Even for that matter, the letter dated 14-8-01 at Exh. W-7 whereby Party I was given revision in basic salary, clearly states that the wage structure of Party I was revised in "management cadre". Party I at no time has disputed that she was not in management cadre and therefore all the aspects discussed above go to establish that as a Junior Officer (M-A) and Officer, Party I was in supervisory management cadre i.e. non-Workmen and was enjoying all the benefits applicable to the management cadre. It is held in the judgment in the case of **A. B. Manore v/s Wandleside National Conductors Ltd., and others 1994 II CLR 793** on the basis of evidence on record that a senior supervisor in Senior Supervisory Management Staff Cadre is not a Workmen.

31. Thus, from the above discussion it is clear that Party I has failed to prove issue No. 1 and consequently it follows that the action of Party II in terminating the services of Party I w.e.f. 22-7-06 is legal and justified. Hence my findings.

32. *Issue No. 3:* In para 2 (b) of the written statement it is the contention of Party II that the factories at Thivim and Bicholim of Party II are closed from May, 2006 and the factory unit No. 2 at Valpoi has been closed from July, 2006, which closure has been accepted by the Workmen, staff and other officer of Party II and as such no relief after the date of closure can be granted. In his rejoinder Party I has denied the above averments made by Party II in para 2(b) and has stated that Party II be directed to prove that it has legally closed down the company as well as the factories. Shri B. S. Sridhara has produced at Exb. E-24 and Exb. E-25, notices dated 3-5-06 and dated 4-5-06 of suspension of operation at Bicholim unit and Thivim unit respectively and at Exb. E-26 and Exb. E-27, notices both dated 21-4-07 addressed to the Secretary, Dept. of Labour, Government of Goa of closure of Bicholim factory and Thivim factory respectively w.e.f. 23-6-07. Further, he has produced at Exb. E-28 copy of a letter dated 11-7-08 addressed to the Chief Inspector, Factories and Boilers pertaining to the surrender of factory licence of Valpoi unit. The above documents produced by Shri B. S. Sridhara are not denied by Party I. Party I has also not denied the fact of closure of the factory unit No. 2 of the Party II at Valpoi where Party I was working at the time of her termination, in the cross-examination of Shri B. S. Sridhara. It is therefore clear from the above documentary evidence that Party II has succeeded in proving the closure of their factories as stated in para 2(b) of the written statement.

33. It may be mentioned here that provisions of Section 25F and 25G of the Act would come into play only in case of the retrenchment of the Workman and not otherwise. The compensation to be given to the Workman in case of closing down of undertakings is as per Section 25FFF of the Act. The use of the expression "as if" in Section 25FFF(1) of the Act shows almost conclusively that the meaning of "retrenchment" is restrictive and does not in terms apply to the case of a bonafide closure of business, as the legislature has not sought to place the closure of an undertaking on the same footing as retrenchment under Section 25F of the Act. This being the position of law and having accepted the closure by Party I, the question of compliance of Section 25F and 25G of the Act, by Party II, does not arise.

34. In his arguments Learned Representative of Party I submitted that the written statement at Exb. 6 is not signed by Party II and that the person

who claimed to have authority to sign the said written statement has no such authority and is not authorized to sign the same. Thus, he prayed to reject the written statement. As rightly pointed out by Lnd. Advocate for Party II, no averment on the above subject matter has been made by Party I in the rejoinder and even no issue on the above subject has been framed by the Court and therefore is not open to Party I to raise such issue at this stage. I find force in the above submissions of Lnd. Advocate for Party II and this is because, in case of such grievance Party I ought to have amended the claim statement incorporating the said fact, upon which an issue would have been framed on the said subject matter. That apart in his evidence Shri P. S. Sridhara has produced the copy of general power of attorney given to him by Party II, at Exb. E-31 and clause 2 of the same states that Shri B. S. Sridhara has been given powers to file/verify the written statements alongwith other documents mentioned in Exb. E-31. Thus even for this reason, I find no force in the above arguments of Lnd. Representative of Party I on this subject.

35. *Issue No. 4:* In view of findings on issue No. 1, Party I is not entitled to any relief.

36. In the result, I pass the following.

ORDER

1. It is hereby held that Mrs. Rameshwari R. Teli, Officer could not be construed as "Workman" as defined under clause(s) of Section 2 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).
2. It is hereby further held that the action of management of Ms. Phil Corporation Limited, Thivim Industrial Estate, Karaswada, Mapusa, Bardez, Goa, in terminating the services of Mrs. Rameshwari R. Teli, with effect from 22-07-2006 is legal and justified.
3. Party I, Mrs. Rameshwari R. Teli is therefore not entitled to any relief.
4. No order as to costs.

Inform the Government accordingly.

Sd/-
(B. K. Thaly),
Presiding Officer,
Industrial Tribunal-
cum-Labour Court.

Notification

No. 28/1/2013-Lab/167

The following award passed by the Industrial Tribunal and Labour Court, at Panaji-Goa on 04-01-2013 in reference No. IT/117/07 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

D. S. Morajkar, Under Secretary (Labour).

Porvorim, 15th April, 2013.

IN THE INDUSTRIAL TRIBUNAL AND
LABOUR COURT
GOVERNMENT OF GOA AT PANAJI

(Before Smt. Bimba K. Thaly, Presiding Officer)

Ref. No. IT/117/07

Shri Shivanand C. Tople,
Flat No. 3, Siddhivinayak Appmts.,
Naik Nagar, Bordem,
Bicholim-Goa.

... Workman/Party I

V/s

M/s. Phil Corporation Ltd.,
Thivim Industrial Estate,
Karaswada, Mapusa, Goa. ... Employer/Party II
Party I/Workman represented by Shri Subhash Naik George.

Party II/Employer represented by Adv. Shri P. J. Kamat.

AWARD

(Passed 4th day of January, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), (for short 'The Act'), the Government of Goa by order dated 13-11-07 bearing No. 28/3/2007-LAB/1157, has referred the following dispute for adjudication.

"(1) Whether, Shri Shivanand C. Tople, Junior Officer-Accounts, could be construed as "Workman" as defined under clause(s) of Section 2 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947)?

(2) If the answer to the issue No. (1) above is in the affirmative, then, whether the action of the Management of M/s. Phil Corpora-

tion Limited, Thivim Industrial Estate Karaswada, Mapusa, Bardez, Goa, in terminating the services of Shri Shivanand C. Tople, with effect from 22-07-2006, is legal and justified?

(3) If the answer to issue No. (2) above is in the negative, then, to what relief the Workman is entitled?"

2. Upon receipt of the reference, IT/117/07 was registered. Notices were issued to both the parties under registered A/D post upon which both the parties were served. Party I filed the statement of claim at Exb. 6. Party II filed the written statement at Exb. 7. Rejoinder was filed by Party I at Exb. 8.

3. In the statement of claim, it is in short the case of Party I that he was engaged as Junior Officer-Accounts with Party II. That he was employed since 24-1-94. Initially he was appointed as clerk and he was confirmed after 6 months. That he was promoted as M-A Grade and thereafter as Officer Accounts in the year 2001. That at time of his termination he was working at Valpoi factory of Party II. That he performed the following duties with Party II.

- a. He performed mainly clerical duties.
- b. He prepared excise gate passes, excise formalities, involved in dispatch of goods etc.
- c. He was involved in maintaining and writing of stock registers.
- d. He was involved in writing the cenvat registers etc.
- e. No workers were working under or with Party I.
- f. There were only officers working alongwith him in his department.
- g. He was reporting to Mr. Deepak Kapne, Asstt. Manager who used to assign duties to him.
- h. He did not sanction leave or supervise anyone.

4. It is further the case of Party I that Party II terminated his services with immediate effect vide letter dated 22-07-06 without giving him one months notice and no retrenchment compensation as well as no leave wages were paid to him. It is stated that no seniority list was prepared so also no principle of "last come, first go" was followed. It is stated that Party II has violated the mandatory provisions of Sections 25F and 25G of the Act. Thus

Party I has prayed to hold that his termination is illegal and unjustified and to reinstate him in service with full back wages and continuity of service with costs and also to grant subsistence allowance of 15% wages pending adjudication, by way of interim relief.

5. In their written statement Party II has stated that Party I is not a Workman under the Act and that no relief could be granted to Party I since the factories at Thivim, Bicholim and Valpoi have been closed and the closure has been accepted by the Workmen. It is stated that Party II has been declared as a sick industrial company in terms of Section 3(1)(o) of the Sick Industrial Company Act 1985 (SICA). It is stated that when the reference is registered Party II was declared as Sick Industrial Company and therefore the provisions of Section 22 of SICA would be attracted. It is stated that on account of stoppage of supplies from the Konica, Party II had to stop the productions of the films and papers totally till it gets another supplier and therefore suspended the activities of Thivim Establishment with effect from 5-05-06, Bicholim Factory w.e.f. 4-05-06, and closed these establishment with effect from 5-05-06 and 4-05-06 respectively. It is stated that Party II closed unit No. 2 at Valpoi in July, 2006 and the services of all the Workmen/supervisors/executives have been terminated on account of closure. It is stated that at the time of discharge of Party I w.e.f. 22-07-06, he was drawing wages of ₹ 6,040/- per month. It is stated that right from his promotion as Junior Officer Accounts, Party I was not a member of the Union as he was in supervisory management cadre, and being in such cadre, he was not governed by the certified standing orders of Party II. It is stated that as Junior officer Accounts, the duties of Party I were to supervise the work of Workmen working in the Accounts Section and the conditions of service, emoluments, benefits of the Party I were all together different from the workers category. That in the accounts section there were many employees in the categories of Workmen who were subordinate to Party I. It is stated that in the said Accounts Section Party I was supervising the work of issue of gate passes, maintenance of stock register, cenvat registers and such other works carried out by the clerks in the Accounts Department. It is stated that Party I being the Officer in supervisory category was discharged on account of the closure of the unit of Party II in July, 2006 with one months notice wage in lieu of notice and ex-gratia compensation. Thus amongst above and other grounds, Party II has prayed to reject the reference.

6. In the rejoinder, Party I has denied the case set up by Party II in their written statement.

7. Based on the above averments of the respective parties issues at Exb. 10 dated 7-10-08 were framed.

8. In support of their case, the Workman Shri Shivanand Tople examined himself as witness No. 1 and Shri Atchutanand Kalangutkar was examined as witness No. 2. On the other hand, Party II examined Shri B. S. Sridhara as witness No. 1 and closed their case.

9. The representatives of both the parties filed written submissions as well as advanced oral arguments.

10. I have gone through the records of the case and have duly considered the submissions of both the Learned Representatives.

11. I am reproducing herewith the issues along with their findings and reasons thereof.

Sr. No.	Issues	Findings
1.	Whether the Workman/Party I proves that he is a "Workman" as defined u/s 2(s) of the Industrial Disputes Act, 1947?	In the negative.
2.	Whether the Workman/Party I proves that the action of Party II/Employer in terminating his services w.e.f. 22-07-2006 is illegal and unjustified?	In the negative.
3.	Whether the Employer/Party II proves that the present order of reference is bad in law as stated in para 2(b) of their written statement?	In the positive.
4.	Whether the Party I is entitled to any relief?	In the negative.
5.	What Award?	As per order below.

REASONS

12. *Issue Nos. 1 & 2:* Both these issues are answered together for the sake of convenience, as they are interconnected.

13. It otherwise cannot be disputed that the burden to prove that he is a 'Workman' within the meaning of Section 2(s) of the Act is on the Party I. In the above context, Learned Advocate for Party II has rightly relied on the judgement

in the case of **S. T. Galande v/s P. O. Hind Labour Court, Pune 2008 (I) CLR 656** in which the Hon'ble High Court of Bombay has observed as under:

"...It is settled principle of law that the onus lies upon the Workman to prove that he satisfies the essential ingredients of being a Workman and, therefore, could raise an industrial dispute..."

14. Lnd. Advocate for Party II has also relied upon the judgement in the case of **H. R. Adyanthaya and others v/s Sandoz (India) Ltd., 1994 II CLR 552** in which the constitutional bench of the Hon'ble Supreme Court has held as under:

"...a person to be the Workman under the said act must be employed to do the work of any category, viz. manual, unskilled, skilled, operational, clerical, supervisory (drawing less than ₹ 1,600/- p.m.) or technical. It is not enough that he is not covered by either by the four exceptions to the definition."

15. Thus from the above settled proposition of law it becomes clear that the person claiming to be a "Workman" must come within the ambit of Section 2(s) of the Act. It is also clear that irrespective of the designation, it is the actual work done by the employee which is determinative of whether he falls within the scope of the definition of "Workman" under Section 2(s) of the Act and the burden to establish the same lies on the Workman.

16. It may be mentioned here that the outcome of issue No. 2 would depend on the outcome of issue No. 1 and this is because if Party I succeeds in proving issue No. 1 it is only then the decision on issue No. 2 would be material or else Party No. 1 fail in proving issue No. 2.

17. Party I has in para 3 of his affidavit in evidence specified the duties performed by him which were mainly clerical duties, preparation of excise gate passes, excise formalities, despatching of goods etc. and writing of cenvat registers. It is also stated in this para that no workers were working under Party I; that only officers working with him in his department; that Party I was reporting to Mr. Deepak Khapne, Asstt. Manager who used to assign duties to him and that Party I did not sanction leave or supervise anyone.

18. In the cross-examination of Party I the above statements made by him are denied by Party II and it is suggested that Party I was supervising

the work of Clerk, Accounts Clerks and Cashiers in Accounts Department.

19. As rightly pointed out by Learned Advocate for Party II except for making the above bare statements on the subject of the duties performed by him, Party I has not produced any documentary or other evidence to substantiate his said stand.

20. No doubt, Party I has examined Atchutanand Kalangutkar who has supported the statements made by Party I on the subject of his duties, but it is apparent from the cross-examination of this witness that he was working at Thivim unit of Party II upto October, 2002 and that Party I never worked at the Thivim unit of Party II. That apart, it is further clear from the cross-examination of this witness that he is representing Party I in this reference an being so the possibility of this witness being an interested witness, cannot be ruled out. That apart, this witness has admitted that his two references against Party II are pending before this Court and therefore the possibility of this witness making statement against Party II on account of unfriendly relation with Party II, cannot be ruled out. Thus, the testimony of Shri Atchutanand Kalangutkar is of no much assistance to Party I to prove the nature of duties performed by him.

21. There is otherwise no dispute that Party No. 1 was initially employed as clerk w.e.f. 24-1-1994 vide letter of appointment dated 1-2-1994 (Exb. W-1); that he was than promoted as Junior Officer Accounts in M-A Grade vide letter dated 5-6-96 w.e.f. 1-4-96 (Exb. W-3) and thereafter as Officer Accounts vide letter dated 24-1-2001 with effect from 1-4-2000 (Exb. 5) and that he worked as such upto the date of his discharge w.e.f. 22-7-2006. It is also apparent from the evidence that at 1 time of his discharge, Party I was drawing wages of ₹ 6,040/- per month.

22. Be that as it may, the letter of appointment given to Party I by Party II at Exb. W-1 does not speak about the duties allotted to Party I. It is true that in the subsequent letters i.e. Exb. W-5, while promoting Party I to the post of Officer Accounts, it is mentioned that all other terms and conditions of the service of Party I would remain unchanged but this by itself cannot be construed to mean that the status of Party I has remained as that of the "Workman" despite his promotions to the post of Officer Accounts. It is pertinent to note that there is no dispute on the part of Party II that Party I was a "Workman" till the time he was holding the post as clerk and therefore it is

required to see on the basis of evidence adduced, if in reality Party I continued to be a "Workman" despite his promotion as Junior Officer Accounts and Officer Accounts.

23. As pointed out above, Party I has not made any efforts to bring on record the required documentary evidence to describe the nature of duties performed by him, as a Workman, as on the date of termination of his services. In this context, Learned Representative Shri Subhash Naik George has contended that such relevant documentary evidence is in possession of Party II and therefore it was for Party II to have produced the same. I find no force in the above contention of Learned Representative Shri Subhash Naik George for the reasons that undoubtedly, the burden to prove that he is a Workman is on Party I and that too by adducing positive evidence and in case Party I was not in possession of the required documents towards its proof, it was for him to make application requesting the Court to direct Party II to produce those relevant documents or to notify Party II to produce these documents, which Party I has failed to do. Thus, it is apparent that no attempt has been made by Party I to establish the nature of duties performed by him as a "Workman". In the above context, I would rely on the judgement in the case of **U.P. State Electricity Board and another v/s Aziz Ahmad 2009 I CLR 690** the Workman in which case had claimed 'equal pay for equal work' on the basis of the contention that his post as "Boiler Overhauling Mechanic" is equivalent to the post of "Boiler Mistry". This contention was accepted by the Tribunal and the Writ Petition filed by the employer was dismissed. However, the Apex Court held that the burden to prove that both the posts are equal was on the Workman. Apex Court observed as under:

"...The aforesaid findings are incorrect and cannot be upheld. The burden prove that a particular fact is always on the person who alleges the same. In the present case it was the contention of the respondent-Workman, who claimed that the job requirements, nature and responsibilities of the post of Boiler Mistry/Fitter are identical and similar with that of the Boiler Overhauling Mechanic. The burden, therefore was on the Workman to prove and establish the aforesaid facts by leading cogent and reliable evidence. He was required to place documentary evidence in support of the same."

24. Perusal of evidence of Party I and more particularly his cross-examination makes it clear

that there is admission on his part that till he was working as clerk with Party II, he was the member of Phil Corporation Employee Union and that he was also governed by the certified standing orders of Party II. The above statement in other words means that upon his promotion as Junior Officer Accounts and thereafter as Officer Accounts, Party I was not governed by the certified standing orders of Party II. Learned Representative, Shri Subhash Naik George by relying on the judgements in the case of **S. A. Sarang v/s W. G. Forge & Allied Industries (1996) I LLJ 67 Bom**, in the case of **Cricket Club of India and Anr. v/s Baljit Shyam (Ms) and Anr. (1998) II LLJ 578 Bom** and in the case of **Development Credit Bank Ltd., v/s Mr. Azim A. Charania 2000 (4) Bom CR 547** contended that when the employee is covered by Certified Standing Orders/Model Standing Orders he has to be considered as a "Workman". I have gone through all the above three judgements and have noticed that the facts in the above three cases are totally different from the facts of the instant case where in apart from the above statement made by Party I, there is no admission on the part of Party II that Party I was covered by the certified standing orders of Part II. This being the case, the observations in the above judgements are not applicable to the instant case.

25. Party I/Workman has also stated that in the cross-examination that Party II had signed wage settlement with the said Union from time to time and till the time he was working as a clerk, he was getting the benefits of the settlement of the said Union. He has admitted that from the time he was promoted as an Officer, he was not entitled for the wage and other benefits given by Party II in the settlement with the said Union. Party I was shown settlement dated 31-7-01 (Exb. E-1) and he has admitted that the said settlement was signed with the said Union by Party II. He has also admitted that the benefits like F.D.A., V.D.A., H.R.A., Travelling and Conveyance Allowance, Canteen Allowance, Travel Allowance, Special/Additional Allowance, L. T. S. A., Accident Leave and Attendance Bonus payable to the Workmen as per Exb. E-1 were not given to him. He has further admitted that as per Annexure 1 to Exb. E-1, in the categories of Workmen/Employees, the junior officers, officers and above grades are not included.

26. The above statement of Party I make it clear beyond doubt that upon his promotion as Junior Officer Accounts and then as Officer Accounts, Party I ceased to be a Workman or else Party I would

definitely raise an issue with Party II on the said subject i.e. of not extending benefits of Exb. E-1 to him. Being so, it would not be proper and justified to hold that Party I continued to be a "Workman" despite not being a member of Phil Corporation Employees Union.

27. As rightly pointed out by Lnd. Adv. for Party II if even after promotion as Junior Officer Accounts (M-A) and Officer Accounts, Party I was to do the same work which was being done by him when he was in the category of Workmen, then there was no reason to promote Party I from clerk to Junior Officer Accounts (M-A) and Officer Accounts with better pay scale and other benefits. The very fact that Party I has not brought anything on record to suggest that he was performing the same duties which he was doing prior to his promotion, goes to show that from the date of his promotion, Party I was doing supervisory and managerial duties and was also paid the salaries and other benefits applicable to the officers.

28. Reference is made to the judgement in the case the of **Karnataka Bank Ltd. v/s Sunita B. Vatsaraj (Smt.) 2007 II CLR 650** in which the Hon'ble Bombay High Court after considering the various authorities on the issue of Workman and non-Workman has held that an employee would be regarded as performing supervisory duties only if he is required to supervise the work of one or more employees working under him. Since discussion Supra reveals that Party I was doing supervisory and managerial duties, in my view he fall in the category of non-Workman.

29. Though it is the contention of the Party I that at the time of termination of services no one month notice was given, it is seen from the termination letter dated 22-7-06 produced by the Party I at Exb. W-10 that alongwith this letter a cheque for one months pay in lieu of notice was given to the Party I. In his cross-examination the Workman has admitted that alongwith Exb. W-10, he was given a cheque of ₹ 20,520/-. Being so the question of Party II giving one months notice to Party I at the time of termination of his services, does not arise.

30. Shri B. S. Sridhara has categorically stated that in the Accounts Section Party I was supervising the work of issue of gate passes, maintenance of stock registers, cenvat registers and such other works carried out by the clerks in the accounts department and that the clerks performed these works with the help of the helpers, peons under the supervision of Party I

being the officer of Party II. He has also stated that Party I was reporting to the Manager for administrative purpose but all the instructions to the workers were given by Party I and he used to get the work done, under his supervision. In his cross-examination Shri B. S. Sridhara has made it clear that there were four departments at Valpoi unit of Party II namely, Production, Quality Control, Stores, Packing, Dispatch and Accounts and that Party I was looking after the accounts department. He has stated that Party I was the only officer in the accounts department and he was assisted by three clerks and helpers. The above statements made by Shri B. S. Sridhara are not specifically denied though it is suggested to him that Party I was performing mainly clerical duties.

31. It appears from the cross-examination of Shri B. S. Sridhara that an attempt has been made by Party I to establish that as per the certified standing orders of Party II, all the supervisors of Party II are Workmen within the meaning of Section (2) (s) of the Act. It is also suggested to Shri B. S. Sridhara that the definition of "Workman" as per the certified standing orders of Party II, means and includes all those employed by the company to do all kinds of manual, technical, clerical or supervisory work however Shri B. S. Sridhara has feigned ignorance over this suggestion. It may be mentioned here that Party I has not produced on record the said certified standing orders of Party II. That apart, no such case has been set up by Party I in his claim statement and even for that matter, it has been rightly submitted by Lnd. Adv. for Party II that the definition of Workman under the Act also includes "supervisor" and it is in that context the word "supervisor" is included in the definition under the standing orders Act. Thus, the meaning attributed to the word "supervisor" under the standing orders cannot be the same as under the Act because this under the Act there is an exception which states that a supervisor drawing more than ₹ 1,600/- p.m. is not a Workman. Being so, it is clear that the meaning of the word "supervisor" under the standing orders is that a supervisor drawing less than ₹ 1,600/- per month is a Workman. Since in the case at hand Party I at the time of termination of his services was drawing more than ₹ 1,600/- p.m. while performing supervisory duties, he cannot be construed as a Workman.

32. Amongst the duties specified in para 3 of his affidavit in evidence, Party I has stated that he did not sanction the leave. Even otherwise, no

evidence has been brought on record to indicate that Party I was sanctioning the leave. However, power to sanction leave is not the sole criteria to decide if the concerned person is a "Workman" or not. Reference is made to the judgement in the matter of **Standard Charter Bank v/s Vandana Joshi and Ors. 2010 1 CLR 163** in which it is observed as under:

"The fact that any employee is not vested with the power to sanction leave or to initiate disciplinary proceedings is not conclusive of the question as to whether the work that is performed by the employee falls within one of the categories stipulated in Section 2(s). Whether leave can be sanctioned and whether disciplinary proceedings can be initiated may in a given case be one of the circumstances which may be considered in the balance. The balance, however, has to be drawn on the basis of the overall nature of the duties and responsibilities performed and the dominant nature of the work that is performed by an employee."

33. I have already discussed supra that Party I has totally failed to adduce positive evidence to establish the nature of duties performed by him and on the contrary from the statements brought on record by Party II in the cross-examination of Party I, it becomes clear that the duties performed by Party I were of supervisory nature and therefore merely because there is no evidence to indicate that Party I was vested with the power to sanction leave or to initiate the disciplinary proceedings, would not drive me to draw the conclusion that Party I falls on the category of Workman.

34. At any rate since discussion above reveals that Party I has failed to prove that he is a Workman, issue Nos. 1 and 2 are answered accordingly.

35. *Issue No. 3:* In para 2(b) of their written statement it is the contention of Party II that the factories at Thivim and Bicholim of Party II are closed from May, 2006 and the factory unit 2 at Valpoi has been closed from July, 2006 which closure has been accepted by the Workmen, staff and officers of the Party II and therefore no relief after the date of closure could be granted. In his rejoinder, in reply to above pleadings, Party I has denied the fact of closure of factories at Thivim and Bicholim from May, 2006 and at Valpoi from July, 2006 and has also denied that the Workmen, staff and officers of Party II have accepted the closure.

36. It may be mentioned here that provisions if Sections 25F and 25G of the Act would come into play only in case of the retrenchment of the Workman and not otherwise. The compensation to be given to the Workman in case of closing down of undertakings is as per Section 25FFF of the Act. The use of the expression "as if" in Section 25FFF (1) of the Act shows almost conclusively that the meaning of "retrenchment" is restrictive and does not in terms apply to the case of a bonafide closure of business, as the legislature has not sought to place the closure of an undertaking on the same footing as retrenchment under Section 25F of the Act. This being the position of law and having accepted the closure by Party I, the question of compliance of Sections 25F and 25G of the Act, by Party II, does not arise.

37. In his evidence Shri B. S. Sridhara has reiterated the facts pleaded in para 2(b) of the written statement and has produced at Exb. E-5 and Exb. E-6 copies of notices both dated 21-4-07 addressed to the Secretary to the Government of Goa, Department of Labour informing their decision to close down Bicholim and Thivim factories respectively and at Exb. E-7 he has produced copy of letter dated 11-7-08 addressed to the Chief Inspector of Factories and Boilers on the subject of closure of their Valpoi unit and surrendering the factory licence, but there has been no effective cross-examination of the said Shri B. S. Sridhara on the above subject. Being so, it is clear that the Party II has succeeded in proving issue No. 2 Hence my findings.

38. In his arguments Learned Representative of Party I submitted that the written statement at Exb. 7 is not signed by Party II and that the person who claimed to have authority to sign the said written statement has no such authority and is not authorized to sign the same. Thus, he prayed to reject the written statement. He also invited my attention to the order dated 3-5-10 (Exb. 27) wherein the above objection raised by him vide application at Exb. 23, was decided by Learned Presiding Officer, Labour Court II, by holding that Party II is a company incorporated under the provisions of the Companies Act, 1956 and hence represented by his Managing Director and therefore there is nothing wrong in authorizing any person to sign the pleading on behalf of the employer company as it is a body corporate unlike a person. It is also stated in this order that Party I has not challenged the aforesaid act of signing the written statement by the so called authorized signatory, in the subsequent proceedings of till he raised the said objections and that it is for Party II to prove independently

that the pleadings filed by the persons are authorized by them, failing which Party II shall fail in discharging the burden. In his cross-examination Shri B. S. Sridhara has produced xerox copy of the power of attorney issued to him by Party II, at Exb. E-10. Perusal of this document reveal that power has been given to Shri B. S. Sridhara to file/verify the written statement as well as other documents mentioned in clause 2 of the same. This witness has also made it clear that the Board of Directors of the employer company has authorized him to appear before the Labour Court, by taking resolution and he has produced the copy of the same resolution at Exb. E-11. He has denied the suggestion that Exb. E-11 does not permit him to sign any document on behalf of the employer company, in the present proceedings. I find no merits in the above suggestions put to Shri B. S. Sridhara for the reasons that Exb. E-10 is a general power of attorney given by Party II to Shri B. S. Sridhara to do and execute various acts including filing and verifying of the written statement and therefore, in my opinion, by virtue of this document, Shri B. S. Sridhara has powers to file/verify the written statement.

39. That apart as rightly pointed out by Lnd. Advocate for Party II, the authority of Shri B. S. Sridhara was not challenged by Party I either in the claim statement or in the rejoinder and therefore no issue on the said subject has been framed by the Court. Being so the question of Party I adverting to such subject matter, without there being any issue on the subject, does not arise.

40. *Issue No. 4:* In view of the findings on issue No. 1, Party I is not entitled to any relief.

41. In the result, I pass the following:

ORDER

1. It is hereby held that Shri Shivanand C. Tople, Junior Officer Accounts could not be construed as "Workman" as defined under clause(s) of Section 2 of the Industrial Disputes Act 1947 (Central Act 14 of 1947)..
2. It is hereby further held that the action of Management of M/s. Phil Corporation Limited, Thivim Industrial Estate, Karaswada, Mapusa, Bardez, Goa in terminating the services of Shri Shivanand C. Tople, with effect from 22-07-2006 is legal and justified.
3. Party I, Shri Shivanand C. Tople is therefore not entitled to any relief.
4. No orders as to costs.

Inform the Government accordingly.

Sd/-
(B. K. Thaly),
Presiding Officer,
Industrial Tribunal-
-cum-Labour Court.

Department of Personnel

Order

File No. 15/17/96-PER/Vol.I

The Governor of Goa is pleased to promote on ad hoc basis Shri Maheshwar S. Mardolkar, Extension Officer (VP) to the post in the cadre of Block Development Officer (Group 'B' Gazetted) in the pay scale of ₹ 9,300-34,800+GP ₹ 4,600/- with immediate effect.

The above ad hoc promotion will not bestow on him any claim for regular appointment and the services rendered on ad hoc basis in the grade will not count for the purpose of seniority in that grade and for eligibility for promotion to the next higher post.

The above ad hoc promotion shall be for a period of one year in the first instance.

On promotion, his pay shall be fixed as per rules.

By order and in the name of the Governor of Goa.

Umeshchandra L. Joshi, Under Secretary (Personnel-I).

Porvorim, 16th May, 2013.

Order

File No. 15/17/96-PER/Vol.I

The Governor of Goa is pleased to order transfer and posting of the following Officers in the cadre of Block Development Officers, with immediate effect, in public interest:

Sr. No.	Name of the officer	Present posting	Posted on transfer as
1	2	3	4
1.	Shri Shashank V. Thakur	B.D.O., Valpoi	B.D.O., Bardez-I with additional charge of BDO, Bardez-II and BDO., Pernem thereby relieving Shri Vishant S. Naik Gaunekar and

1	2	3	4
			Shri Tushar T. Halankar, from the additional charges of BDO-I and BDO-II, Mapusa respectively.
2. Shri Amir Yeshwant Parab	B.D.O., Quepem	B.D.O., Valpoi with additional charge of Chief Officer, Valpoi Municipal Council.	
3. Shri Tushar T. Halankar	B.D.O., Pernem	B.D.O., Quepem.	
4. Shri Uday Rama Prabhu Dessai	B.D.O., Salcete-II	B.D.O., Canacona thereby relieving Shri Amir Yeshwant Parab from the additional charge.	
5. Shri Maheshwar S. Mardolkar	Extension Officer (VP)	on ad hoc promotion posted as B.D.O., Salcete-II.	

Smt. Anuja Paresch Fal Dessai, B.D.O., Sanguem shall hold the additional charge of the post of BDO, Dharbandora, until further orders.

Further Shri Manuel P. Barreto, B.D.O., Mormugao shall hold the additional charge of the post of BDO, Salcete-I, thereby relieving Shri Uday Rama Prabhu Dessai, from the additional charge, until further orders.

The above officers shall compulsorily complete the process of handing over/taking over of their respective posts on or before 21-05-2013 and submit their Certificate of transfer of charge to the Personnel Department within the said period. Failure on the part of the officers to comply the above order shall be viewed seriously.

By order and in the name of the Governor of Goa.

Umeshchandra L. Joshi, Under Secretary (Personnel-I).

Porvorim, 16th May, 2013.

Corrigendum

File No. 6/13/2013-PER

Read: Order No. 6/13/2013-PER dated 30-04-2013.

The period of extension in ad hoc appointment in respect of Shri H. A. Ali, Junior Scale Officer of Goa Civil Service mentioned as "12-04-2013 to

31-03-2014 (till the date of retirement)" in Order dated 30-04-2013 read in preamble, shall be corrected to read as "12-04-2013 to 28-02-2014 (till the date of retirement)".

By order and in the name of the Governor of Goa.

Umeshchandra L. Joshi, Under Secretary (Personnel-I).

Porvorim, 13th May, 2013.

Department of Power

Chief Electrical Engineer

Order

No. CEE/ESTT-4817/CONF/AL-101/43

Whereas, disciplinary proceedings had been initiated against Shri Sakham Vithu Gawas, Assistant Lineman/Wireman of this Department, under Rule-14 of the Central Civil Services (Classification, Control and Appeal) Rules-1965, vide Memorandum bearing No. CEE/ESTT-4817/CONF/AL-101/92 dated 31-05-2011, on the following articles of charge:

Article-I

That said Shri Sakham Vithu Gawas, presently functioning as a Assistant Lineman/Wireman in the office of the Sub-Divisional Engineer, Elect., O&M Sub-Divn-I, Corlim, Tiswadi, Goa, under the control of the Executive Engineer, Elect., O&M Divn-I, Panaji-Goa had mis-represented his date of Birth and made a false declaration at the time of initial appointment in Government service, and submitted Birth Certificate 14-11-1984, before the appointing authority, showing his date of Birth as 14th May, 1956, despite having full knowledge that his birth was registered in the concerned Civil Registration office and as per the records of the said Civil Registration of Births and Deaths his Birth date is 12th April, 1947 and not 14th May, 1956 and inspite of knowing above fact he failed to rectify the same in his service records.

By the aforesaid act the said Shri Sakham Vithu Gawas, Assistant Lineman/Wireman has violated Rule-3(1) (i) (ii) & (iii) of the Central Civil Services (Conduct) Rules, 1964.

And whereas, a charge-sheet incorporating the above charges had been served on said Shri Sakham Vithu Gawas, Assistant Lineman/Wireman, vide Memorandum bearing No. CEE/ESTT-4817/CONF/AL-101/92 dated 31-05-2011

and the statement of defence dated 20-06-2011, submitted by said Shri Sakham Vithu Gawas, Assistant Lineman/Wireman in response to above Charge-Sheet Memorandum had been perused by the undersigned and found not to be convincing and satisfactory.

And whereas, Shri A. X. B. Viegas, Senior Scale Officer (Retd.) had been appointed as an Inquiry Officer, vide order bearing No. CEE/ESTT-4817/CONF/AL-101/295 dated 09-09-2011, to inquire into the charges framed against said Shri Sakham Vithu Gawas, Assistant Lineman/Wireman.

And whereas, after due inquiry the said Shri A. X. B. Viegas, Inquiry Officer submitted the Inquiry Report in this regard, vide dated 09-05-2012 and as per the findings arrived by the aforesaid Inquiry Authority in his said Report, the charges framed against aforesaid Shri Sakham Vithu Gawas, Assistant Lineman/Wireman stands to be proved.

And whereas, vide Memorandum bearing No. CEE/ESTT-4817/CONF/AL-101/84 dated 18-06-2012, the said Shri Sakham Vithu Gawas, Assistant Lineman/Wireman had been given an opportunity of making representation/submission if any against the aforesaid Inquiry Report dated 09-05-2012.

And whereas, the said Shri Sakham Vithu Gawas, Assistant Lineman/Wireman, submitted the representation/submission, in response to above Memorandum dated 18-06-2012, vide dated 12-11-2012, which had been perused by the undersigned and found not to be convincing and satisfactory.

And whereas, on careful consideration of the said Inquiry Report, representation of the charged official and the circumstances of the case, the

undersigned agrees with the findings of the Inquiry Officer and on considering the gravity of the charges that have been proved, it finds that the conduct of said Shri Sakham Vithu Gawas, Assistant Lineman/Wireman renders him unfit to be retained in the Government Service. The undersigned therefore arrives at the conclusion that good and sufficient reasons exist to impose the major penalty on said Shri Sakham Vithu Gawas, Assistant Lineman/Wireman for his above act of grave mis-conduct.

Now therefore, in exercise of the powers conferred under Rule-11(vii), of the Central Civil Services (Classification, Control and Appeal) Rules-1965, the undersigned in the capacity of the Disciplinary Authority hereby imposes the penalty of "Compulsory Retirement" from Government Service on considering birth certificate of said Shri Sakham Vithu Gawas, Assistant Lineman/Wireman bearing Registration No. 706 dated 19-09-1947, w.e.f. 30-04-2007 on said incumbent with immediate effect.

Further, it orders to recover all the monitory benefits entitled to said Shri Sakham Vithu Gawas, Assistant Lineman/Wireman on his Compulsory Retirement, such as Gratuity of ₹ 97,672/-, Commutation value of ₹ 1,76,794/- and also ₹ 4,000.55/- from his monthly pension, for the period of 15 years, which the aforementioned amount was already paid to him in terms of salary and related benefits, w.e.f. 01-05-2007 till December, 2012 (copy of calculation sheet in this regard is enclosed herewith).

The receipt of this order should be acknowledged by said Shri Sakham Vithu Gawas, Assistant Lineman/Wireman.

Lekshmanan S., Chief Electrical Engineer.

Panaji, 3rd May, 2013.

ANNEXURE

Statement showing details of monetary benefits paid to Shri Sakham V. Gawas, Asstt. Lineman/Wireman from May, 2007 to December, 2012

Period	BP	DP	DA	CCA	HRA	TA	FDA	WA	DA Diff	Total
1	2	3	4	5	6	7	8	9	10	11
May, 2007	3,790	1,895	1,990	65	853	75	175	70		8,913
June, 2007	3,790	1,895	1,990	65	853	75				8,668
July, 2007	3,790	1,895	1,990	65	853	75	175	70		8,913
August, 2007	3,790	1,895	1,990	65	853	75	175	70		8,913
September, 2007	3,790	1,895	1,990	65	853	75	175	70		8,913
October, 2007	3,790	1,895	2,331	65	853	75	175	70	1,023	10,277
November, 2007	3,790	1,895	2,331	65	853	75	175	70		9,254

OFFICIAL GAZETTE — GOVT. OF GOA

SERIES II No. 8

23RD MAY, 2013

1	2	3	4	5	6	7	8	9	10	11
December, 2007	3,860	1,930	2,374	65	869	75	175	70		9,418
January, 2008	3,860	1,930	2,331	65	869	75	175	70		9,375
February, 2008	3,860	1,930	2,331	65	869	75	175	70		9,375
March, 2008	3,860	1,930	2,331	65	869	75	175	70		9,375
April, 2008	3,860	1,930	2,721	65	869	75	175	70	1,041	10,806
May, 2008	3,860	1,930	2,721	65	869	75	175	70		9,765
June, 2008	3,860	1,930	2,721	65	869	75	175	70		9,765
July, 2008	3,860	1,930	2,721	65	869	75	175	70		9,765
August, 2008	3,860	1,930	2,721	65	869	75	200	70		9,790
Field duty Diff							100			100
September, 2008	3,860	1,930	2,721	65	869	75	200	70		9,790
October, 2008	3,860	1,930	2,721	65	869	75	200	70		9,790
Bonus										4,441
November, 2008	7,740	1,800	1,526		1,908	928	200	70		14,172
December, 2008	7,740	1,800	1,526		1,908	928	200	70		14,172
January, 2009	7,740	1,800	1,526		1,908	928	200	70		14,172
February, 2009	7,740	1,800	1,526		1,908	928	200	70		14,172
6th pay difference for Sep-Oct., 2008										8764
March, 2009	7,740	1,800	1,526		1,908	928	200	70		14,172
April, 2009	7,740	1,800	2,099		1,908	976	200	70	1,863	16,656
May, 2009	7,740	1,800	2,099		1,908	976	200	70		14,793
June, 2009	7,740	1,800	2,099		1,908	976	200	70		14,793
July, 2009	8,030	1,800	2,163		1,966	976	200	70		15,205
August, 2009	8,030	1,800	2,163		1,966	976	200	70		15,205
September, 2009	8,030	1,800	2,163		1,966	976	200	70		15,205
October, 2009	8,030	1,800	2,654		1,966	1,016	200	70	1,593	17,329
November, 2009	8,030	1,800	2,654		1,966	1,016	200	70		15,736
December, 2009	8,030	1,800	2,654		1,966	1,016	200	70		15,736
January, 2010	8,030	1,800	2,654		1,966	1,016	200	70		15,736
February, 2010	8,030	1,800	2,654		1,966	1,016	200	70		15,736
6th pay arrears w.e.f. 1-1-2006 to 31-8-2008										56,978
March, 2010	8,030	1,800	2,654		1,966	1,016	200	70		15,736
April, 2010	8,030	1,800	3,441		1,966	1,080	200	70	2,553	19,140
May, 2010	8,030	1,800	3,441		1,966	1,080	200	70		16,587
June, 2010	8,030	1,800	3,441		1,966	1,080	200	70		16,587
July, 2010	8,330	1,800	3,546		2,026	1,080	200	70		17,052
August, 2010	8,030	1,800	3,546		2,026	1,080	200	70		16,752
September, 2010	8,030	1,800	3,546		2,026	1,080	200	70		16,752
October, 2010	8,330	1,800	4,559		2,026	1,160	200	70	3,279	21,424
November, 2010	8,330	1,800	4,559		2,026	1,160	200	70		18,145
December, 2010	8,330	1,800	4,559		2,026	1,160	200	70		18,145
January, 2011	8,330	1,800	4,559		2,026	1,160	200	70		18,145
01-02-2011 to 3-2-2011 @ ₹ 8,330	595	129	326		2,026					3,076
4-2-2011 to 28-2-2011										
Subsistence allow 50%	3,868	836	2,117							6,821
March, 2011	4,165	900	2,279		2,026				9,370	April, 2011
4,165	900	2,279			2,026				9,370	
May, 2011	4,165	900	2,583		2,026				9,674	
June, 2011	4,165	900	2,583		2,026				9,674	
Grade pay arrears w.e.f. 01-01-2006 to 31-8-2006	260	4,800	320							5,380

1	2	3	4	5	6	7	8	9	10	11
July, 2011	6,248	1,350	3,875		2,026					13,499
diff w.e.f. 04-05-11 to 30-6-11	3,960	450	2,251							6,661
Subsistence allowance diff. w.e.f. 04-05-11 to 30-6-12	6,248	1,350	3,875		2,026					13,499
September, 2011	6,248	1,350	4,407		1,520					13,525
October, 2011	6,248	1,350	4,407		1,520			1,064		14,589
November, 2011	6,248	1,350	4,407		1,520					13,525
December, 2011	6,248	1,350	4,407		1,520					13,525
January, 2012	6,248	1,350	4,407		1,520					13,525
February, 2012	6,248	1,350	4,407		1,520					13,525
March, 2012	6,248	1,350	4,407		2,026					14,031
April, 2012	6,248	1,350	4,939		2,026			1,596		16,159
May, 2012	6,248	1,350	4,939		2,026					14,563
June, 2012	6,248	1,350	4,939		2,026					14,563
July, 2012	6,248	1,350	4,939		2,026					14,563
August, 2012	6,248	1,350	4,939		2,026					14,563
September, 2012	6,248	1,350	4,939		2,026					14,563
October, 2012	6,248	1,350	5,471		2,026			1,596		16,691
November, 2012	6,248	1,350	5,471		2,026					15,095
December, 2012	6,248	1,350	5,471		2,026					15,095
	4,22,787	1,17,210	2,17,947	1,170	1,12,130	29,062	8,550	3,080	15,608	9,97,727

Department of Public Health

Order

No. 1/1/2012-II/PHD

Government is pleased to constitute a Committee for enforcement of the provisions of Agreement-cum-Bond executed by MBBS/PG students of Goa Medical College, comprising of the following:

1. Dean, Goa Medical College – Chairman.
2. Director (Administration), Goa Medical College – Member.
3. Dr. Jagadish Cacodkar, Associate Professor in GMC – Member.
4. Additional Secretary (Health) – Member.
5. Director of Health Services – Member.

The role and responsibilities of the above Committee shall be as under:

1. The Committee shall decide on posting of the Post Graduate student in the positions of Senior Resident/Lecturer in Goa Medical College and Medical Officer/Jr. Consultants under Directorate of Health Services, purely on the merit of the students.

2. The Committee shall examine the exemption of enforcing the Bond provisions in rarest of the rare cases, in case situation so warrants.
3. Any other issue as per requirement.

Consequent upon formation of above Committee, a meeting shall be convened within a week's period from the date of issue of the said order.

By order and in the name of the Governor of Goa.

D. G. Sardesai, Additional Secretary (Health).
Porvorim, 16th May, 2013.

Order

No. 46/1/2006-I/PHD(PF)

The following Medical Officers under Directorate of Health Services are transferred and posted at the places indicated against their names:

Sr. No.	Name of the Doctor	Present place of posting	transferred and posted at
1	2	3	4
1.	Dr. Roshan Nazareth	Primary Health Centre, Candolim	Primary Health Centre, Aldona.

1	2	3	4
2.	Dr. Anil Khandeparkar	Primary Health Centre, Aldona	Primary Health Centre, Candolim.

By order and in the name of the Governor of Goa.

D. G. Sardessai, Addl. Secretary (Health).

Porvorim, 17th May, 2013.

Order

No. 4/16/2002-II/PHD/Vol.I

Read: Memorandum No. 4/16/2002-II/PHD/Vol.I dated 18-03-2013.

On the recommendation of the Goa Public Service Commission conveyed vide letter No. COM/I/5/30(2)/91-2010/Vol.I/348 dated 20-02-2013, Government is pleased to appoint Dr. Rupa Satish Padwalkar to the post of Lecturer in the Department of Obstetrics and Gynaecology in the Goa Medical College, Bambolim on temporary basis in the Pay Band—3, ₹ 15,600-39,100+Grade Pay of ₹ 6,600/- with immediate effect and as per the terms and conditions contained in the Memorandum cited above.

Dr. Rupa Satish Padwalkar shall be on probation for a period of two years.

Dr. Rupa Satish Padwalkar has been declared medically fit by the Medical Board.

The appointment is made subject to the verification of her character and antecedents. In the event of any adverse remarks noticed by the Government on verification of her character and antecedents, her services will be terminated.

The appointment is made against the vacancy occurred due to promotion of Dr. Mrinalini Sahasrabhojane, Lecturer to the post of Assistant Professor vide Order No. 4/16/2002-II/PHD/Vol.I dated 30-08-2010.

By order and in the name of the Governor of Goa.

Sangeeta M. Porob, Under Secretary (Health).

Porvorim, 17th May, 2013.

Notification

No. PS(H)/2/NC/2012

Read: Notification No. 7/20/2012-LA dated 03-10-2012.

In exercise of the powers conferred by sub-section (3) of Section 1 of the Goa Nursing Council Act, 2012 (Goa Act 23 of 2012) (hereinafter referred to as the "said Act"), the Government hereby appoints the 1st day of June, 2013 as the date on which the provisions of the said Act shall come into force.

By order and in the name of the Governor of Goa.

D. G. Sardessai, Addl. Secretary (Health).

Porvorim, 16th May, 2013.

Addendum

No. 4/19/2002-II/PHD

Read: Government Order No. 4/19/2002-II/PHD dated 05-07-2011.

In the Government Order cited at preamble, after the 1st para, following para shall be added, as under:

"Dr. Borkar Sharmila G. shall be on probation period for a period of 02 years with effect from her date of joining during, which she shall maintain her Annual Assessment Reports".

The rest of the contents shall remain the same.

By order and in the name of the Governor of Goa.

D. G. Sardessai, Additional Secretary (Health).

Porvorim, 25th April, 2013.

Corrigendum

No. 47/29/2005-I/PHD

Read: Order No. 47/29/2005-I/PHD dated 12-12-2012.

In the Order No. 47/29/2005-I/PHD dated 12-12-2012 referred to above, the date mentioned as w.e.f. 01-12-2012 to 30-11-2012, may be corrected to read as w.e.f. 01-12-2010 to 30-11-2012.

Anju S. Kerkar, Under Secretary (Health-II).

Porvorim, 10th May, 2013.

Department of Transport

Directorate of Transport

—
Notification

Ref. No. D.Tpt/EST/2013/1824

In exercise of powers conferred by clause (xii) of sub-rule (1) and Rule 22 of the Goa, Daman and Diu Motor Vehicles Tax Rules, 1974, the Government of Goa hereby exempts Vehicle No. GA-03/N-1111 of make Ashok Leyland

(Medium Passenger Vehicle) bearing chassis No. JDR141702 and Engine No. JDH346964 of model January, 2006 owned by Domnic & Joan Ministries, H. No. 315/4, Near Sodiem Panchayat, Trova Vaddo, Sodiem, Siolim, Bardez-Goa, from payment of tax due to this State, being a Charitable Trust.

Arun L. Desai, Director & ex officio Joint Secretary (Tpt).

Panaji, 13th May, 2013.

www.goaprintingpress.gov.in

Published and Printed by the Director, Printing & Stationery,
Government Printing Press,
Mahatma Gandhi Road, Panaji-Goa 403 001.

PRICE—Rs. 32.00

PRINTED AT THE GOVERNMENT PRINTING PRESS, PANAJI-GOA-63/450-5/2013.